House of Representatives

File No. 870

General Assembly

January Session, 2011

(Reprint of File No. 469)

Substitute House Bill No. 6526
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
June 2, 2011

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 32-9cc of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established, within the Department of Economic and Community Development, an Office of Brownfield Remediation and Development. In addition to the other powers, duties and responsibilities provided for in this chapter, the office shall promote and encourage the development and redevelopment of brownfields in the state. The Office of Brownfield Remediation and Development shall coordinate and cooperate with state and local agencies and individuals within the state on brownfield redevelopment initiatives, including program development and administration, community outreach, regional coordination and seeking federal funding opportunities.

(b) The office shall:

(1) Develop procedures and policies for streamlining the process for brownfield remediation and development;

(2) Identify existing and potential sources of funding for brownfield remediation and develop procedures for expediting the application for and release of such funds;

(3) Establish an office and maintain an informational Internet web site to provide assistance and information concerning the state's technical assistance, funding, regulatory and permitting programs;

(4) Provide a single point of contact for financial and technical assistance from the state and quasi-public agencies;

(5) Develop a common application to be used by all state and quasi-public entities providing financial assistance for brownfield assessment, remediation and development; **[**and**]**

(6) Identify and prioritize state-wide brownfield development opportunities; and

(7) Develop and execute a communication and outreach program to educate municipalities, economic development agencies, property owners and potential property owners and other organizations and individuals with regard to state **[**policies and procedures**]** programs for brownfield remediation and redevelopment.

(c) Subject to the availability of funds, there shall be a state-funded **[**pilot**]** municipal brownfield grant program to identify brownfield remediation economic opportunities in **[**five**]** Connecticut municipalities annually. For each round of funding, the Commissioner of Economic and Community Development may select at least six municipalities, one of which shall have a population of less than fifty thousand, one of which shall have a population of more than fifty thousand but less than one hundred thousand, two of which shall have populations of more than one hundred thousand and **[**one**]** two of which shall be selected without regard to population. The

Commissioner of Economic and Community Development shall designate [five pilot] municipalities in which untreated brownfields hinder economic development and shall make grants under such [pilot] program to these municipalities or economic development agencies associated with each of the [five] selected municipalities that are likely to produce significant economic development benefit for the designated municipality.

(d) The Department of Environmental Protection, the Connecticut Development Authority, the Office of Policy and Management and the Department of Public Health shall each designate one or more staff members to act as a liaison between their offices and the Office of Brownfield Remediation and Development. The Commissioners of Economic and Community Development, Environmental Protection and Public Health, the Secretary of the Office of Policy and Management and the executive director of the Connecticut Development Authority shall enter into a memorandum of understanding concerning each entity's responsibilities with respect to the Office of Brownfield Remediation and Development. The Office of Brownfield Remediation and Development may [develop and] recruit two volunteers from the private sector, including a person from the Connecticut chapter of the National Brownfield Association, with experience in different aspects of brownfield remediation and development. Said volunteers may assist the Office of Brownfield Remediation and Development in [achieving the goals of this section] marketing the brownfields programs and redevelopment activities of the state.

(e) The Office of Brownfield Remediation and Development may call upon any other department, board, commission or other agency of the state to supply such reports, information and assistance as said office determines is appropriate to carry out its duties and responsibilities. Each officer or employee of such office, department, board, commission or other agency of the state is authorized and directed to cooperate with the Office of Brownfield Remediation and Development and to furnish such reports, information and assistance.

(f) Brownfield sites identified for funding under the [pilot] grant program established in subsection (c) of this section shall receive priority review status from the Department of Environmental Protection. Each property funded under this program shall be investigated in accordance with prevailing standards and guidelines and remediated in accordance with the regulations established for the remediation of such sites adopted by the Commissioner of Environmental Protection or pursuant to section 22a-133k, as amended by this act, and under the supervision of the department or a licensed environmental professional in accordance with the voluntary remediation program established in section 22a-133x. In either event, the department shall determine that remediation of the property has been fully implemented or that an audit will not be conducted upon submission of a report indicating that remediation has been verified by an environmental professional licensed in accordance with section 22a-133v. Not later than ninety days after submission of the verification report, the Commissioner of Environmental Protection shall notify the municipality or economic development agency as to whether the remediation has been performed and completed in accordance with the remediation standards, whether an audit will not be conducted, or whether any additional remediation is warranted. For purposes of acknowledging that the remediation is complete, the commissioner or a licensed environmental professional may indicate that all actions to remediate any pollution caused by any release have been taken in accordance with the remediation standards and that no further remediation is necessary to achieve compliance except postremediation monitoring [,] or natural attenuation monitoring. [or the recording of an environmental land use restriction.]

(g) All relevant terms in this subsection, subsection (h) of this section [,] and sections 32-9dd to 32-9ff, inclusive, as amended by this act, [and section 11 of public act 06-184] shall be defined in accordance with the definitions in chapter 445. For purposes of subdivision (12) of subsection (a) of section 32-9t, this subsection, subsection (h) of this section [,] and sections 32-9dd to 32-9gg, inclusive, [and section 11 of

public act 06-184,**]** "brownfields" means any abandoned or underutilized site where redevelopment, **[**and**]** reuse **[**has not occurred due to the presence**]** or expansion has not occurred due to the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation **[**prior to**]** before or in conjunction with the restoration, redevelopment, **[**and**]** reuse and expansion of the property.

(h) The Departments of Economic and Community Development and Environmental Protection shall administer the provisions of subdivision (1) of section 22a-134, as amended by this act, section 32-1m, subdivision (12) of subsection (a) of section 32-9t **[**,**]** and sections 32-9cc to 32-9gg, inclusive, as amended by this act, **[**and section 11 of public act 06-184**]** within available appropriations and any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

Sec. 2. Section 32-9ee of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) Any municipality, economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 that receives grants through the Office of Brownfield Remediation and Development or the Department of Economic and Community Development, including those municipalities designated by the Commissioner of Economic and Community Development as part of the **[**pilot**]** municipal brownfield grant program established in subsection (c) of section 32-9cc, as amended by this act, for the investigation and remediation of a brownfield property shall be considered an innocent party and shall not be liable under section 22a-432, 22a-433, 22a-451 or 22a-452 for conditions pre-existing or existing on the brownfield property as of the

date of acquisition or control as long as the municipality, economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution that is subject to remediation under section 22a-133k, as amended by this act, and funded by the Office of Brownfield Remediation and Development or the Department of Economic and Community Development; does not exacerbate the conditions; and complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, the municipality, economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 shall only be responsible for responding to contamination exacerbated by its negligent or reckless activities.

(b) In determining what funds shall be made available for an eligible brownfield remediation, the Commissioner of Economic and Community Development shall consider (1) the economic development opportunities such reuse and redevelopment may provide, (2) the feasibility of the project, (3) the environmental and public health benefits of the project, and (4) the contribution of the reuse and redevelopment to the municipality's tax base.

(c) No person shall acquire title to or hold, possess or maintain any

interest in a property that has been remediated in accordance with the [pilot] municipal brownfield grant program established in subsection (c) of section 32-9cc, as amended by this act, if such person (1) is liable under section 22a-432, 22a-433, 22a-451 or 22a-452; (2) is otherwise responsible, directly or indirectly, for the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material or waste; (3) is a member, officer, manager, director, shareholder, subsidiary, successor of, related to, or affiliated with, directly or indirectly, the person who is otherwise liable to under section 22a-432, 22a-433, 22a-451 or 22a-452; or (4) is or was an owner, operator or tenant. If such person elects to acquire title to or hold, possess or maintain any interest in the property, that person shall reimburse the state of Connecticut, the municipality and the economic development agency for any and all costs expended to perform the investigation and remediation of the property, plus interest at a rate of eighteen per cent.

Sec. 3. Section 32-9ff of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established an account to be known as the "Connecticut brownfields remediation account" which shall be a separate, nonlapsing account within the General Fund. The account shall contain any moneys required by law to be deposited in the account and shall be held separate and apart from other moneys, funds and accounts. Investment earnings credited to the account shall become part of the assets of the account. Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the next fiscal year.

(b) The [Office of Brownfield Remediation and Development, established in subsections (a) to (f), inclusive, of section 32-9cc] Commissioner of Economic and Community Development may use amounts in the account established pursuant to subsection (a) of this section to fund remediation and restoration of brownfield sites as part of the [pilot] municipal brownfield grant program established in

subsection (c) of section 32-9cc, as amended by this act.

Sec. 4. Section 22a-134a of the general statutes is amended by adding subsection (n) as follows (*Effective from passage*):

(NEW) (n) Notwithstanding any other provision of this section, the execution of a Form III or a Form IV shall not require a certifying party to investigate or remediate any release or potential release of pollution at the parcel that occurs after the completion of a Phase II investigation, as defined in the Connecticut Department of Environmental Protection's Site Characterization Guidance Document, or from and after the date such Form III or Form IV was filed with the commissioner, whichever is later.

Sec. 5. Section 22a-426 of the general statutes, as amended by section 9 of public act 10-158, is amended by adding subsections (d) to (g), inclusive, as follows (*Effective from passage*):

(NEW) (d) The state's water quality standards, including the surface and ground water classifications, in effect on February 28, 2011, shall remain in full force and effect, unless modified in accordance with subsections (a), (e), (f) and (g) of this section. On or after March 1, 2011, the commissioner may reclassify surface or ground waters within the state in accordance with the procedures specified in subsections (e), (f) and (g) of this section.

(NEW) (e) Notwithstanding the provisions of subsection (a) of this section and chapter 54, the following procedures shall apply to any surface or ground water reclassification initiated by the commissioner: (1) The commissioner shall hold a public hearing in accordance with subdivision (3) of subsection (f) of this section. Such public hearing shall not be considered a contested case pursuant to chapter 54; (2) notice of such hearing specifying the surface or ground waters for which reclassification is proposed and the time, date and place of such hearing and how members of the public may obtain additional information regarding such reclassification shall be published once in a newspaper having a substantial circulation in the affected area at least

thirty days before such hearing; and (3) such notice shall also be given by certified mail to the chief executive officer of each municipality in which the water affected by such reclassification is located with a copy to the director of health of each municipality, at least thirty days prior to the hearing. Following the public hearing, the commissioner shall provide notice of the reclassification decision in the Connecticut Law Journal and to the chief elected official and the director of health of each municipality in which the water affected by such reclassification is located.

(NEW) (f) Notwithstanding the provisions of subsection (a) of this section and chapter 54, the following procedures shall apply to any surface or groundwater reclassification requested by a person other than the commissioner: (1) Any person seeking a reclassification shall apply to the commissioner on forms prescribed by the commissioner and shall provide the information required by such forms; (2) at least thirty days before the hearing specified in subdivision (3) of this subsection, the commissioner shall publish or cause to be published, at the expense of the person seeking a reclassification, once in a newspaper having a substantial circulation in the affected area (A) the name of the person seeking a reclassification, (B) an identification of the surface or ground waters affected by such reclassification, (C) notice of the commissioner's tentative determination regarding such reclassification, (D) how members of the public may obtain additional information regarding such reclassification, and (E) the time, date and place of a public hearing regarding such reclassification. Any such notice shall also be given by certified mail to the chief executive officer of each municipality in which the water affected by such reclassification is located, with a copy to the director of health of each municipality, at least thirty days before the hearing; (3) the commissioner shall conduct a public hearing regarding any tentative determination to reclassify surface or ground waters. Such public hearing shall not be considered a contested case pursuant to chapter 54, but shall be conducted in a manner which affords all interested persons reasonable opportunity to provide oral or written comments.

The commissioner shall maintain a recording of the hearing; and (4) following the public hearing, the commissioner shall provide notice of the reclassification decision in the Connecticut Law Journal and to the chief elected official and the director of health of each municipality in which the water affected by such reclassification is located.

(NEW) (g) Any decision by the commissioner to reclassify surface or ground water shall be consistent with the state's water quality standards and the commissioner shall comply with all applicable federal requirements regarding reclassification of surface water.

Sec. 6. (*Effective from passage*) Not later than seven days after the effective date of this section, within available resources, the Commissioner of Environmental Protection shall commence a comprehensive evaluation of the property remediation programs and the provisions of the general statutes that affect property remediation. Not later than December 15, 2011, the commissioner shall issue a comprehensive report, in accordance with section 11-4a of the general statutes, to the Governor and to the joint standing committees of the General Assembly having cognizance of matters relating to the environment and commerce. The evaluation shall include (1) factors that influence the length of time to complete investigation and remediation under existing programs; (2) the number of properties that have entered into each property remediation program, the rate by which properties enter and the number of properties that have completed the requirements of each property remediation program; (3) the use of licensed environmental professionals in expediting property remediation; (4) audits of verifications rendered by licensed environmental professionals; (5) the programs provided for in chapters 445 and 446k of the general statutes that provide liability relief for potential and existing property owners; (6) a comparison of existing programs to states with a single remediation program; (7) the use by the commissioner of resources when adopting regulations such as studies published by other federal and state agencies, the Connecticut Academy of Science and Engineering or other such research organization and university studies; and (8) recommendations that will

address issues identified in the report or improvements that may be necessary for a more streamlined or efficient remediation process.

Sec. 7. Subdivision (1) of subsection (a) of section 32-9kk of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(1) "Brownfield" means any abandoned or underutilized site where redevelopment, **[**and**]** reuse or expansion has not occurred due to the presence or potential presence of pollution in the buildings, soil or groundwater that requires investigation or remediation before or in conjunction with the restoration, redevelopment and reuse of the property;

Sec. 8. Section 22a-6 of the general statutes is amended by adding subsections (i) to (k), inclusive, as follows (*Effective from passage*):

(NEW) (i) Notwithstanding the provisions of subsection (a) of this section, no person shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, as amended by this act, 22a-134a, as amended by this act, or 22a-134e for any new or pending application, provided such person has received financial assistance from any department, institution, agency or authority of the state for the purpose of investigation or remediation, or both, of a brownfield site, as defined in section 32-9kk, as amended by this act, and such activity would otherwise require a fee to be paid to the commissioner for the activity conducted with such financial assistance.

(NEW) (j) Notwithstanding the provisions of subsection (a) of this section, no department, institution, agency or authority of the state or the state system of higher education shall be required to pay any fee established by the commissioner pursuant to section 22a-133x, 22a-133aa, as amended by this act, 22a-134a, as amended by this act, or 22a-134e for any new or pending application, provided such division of the state is conducting an investigation or remediation, or both, of a brownfield site, as defined in section 32-9kk, as amended by this act, and siting a state facility on such brownfield site.

(NEW) (k) Notwithstanding the provisions of subsection (a) of this section, no person shall be required to pay any fee associated with a brownfield, as defined in section 32-9kk, as amended by this act, due to the commissioner resulting from the actions of another party prior to their acquisition of such brownfield, provided such person intends to investigate and remediate such brownfield.

Sec. 9. Section 32-9*ll* of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) There is established an abandoned brownfield cleanup program. The Commissioner of Economic and Community Development shall determine, in consultation with the Commissioner of Environmental Protection, properties and persons eligible for said program.

(b) For a person**,** **[**and**]** a municipality or a property to be eligible, the Commissioner of Economic and Community Development shall determine if (1) the property is a brownfield, as defined in section 32-9kk, as amended by this act, and such property has been unused or significantly underused **[**since October 1, 1999**]** for at least five years before an application filed with the commissioner pursuant to subsection (g) of this section; (2) such person or municipality intends to acquire title to such property for the purpose of redeveloping such property; (3) the redevelopment of such property has a regional or municipal economic development benefit; (4) such person or municipality did not establish or create a facility or condition at or on such property that can reasonably be expected to create a source of pollution to the waters of the state for the purposes of section 22a-432 and is not affiliated with any person responsible for such pollution or source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than a relationship by which such owner's interest in such property is to be conveyed or financed; (5) such person or municipality is not otherwise required by law, an order or consent order issued by the Commissioner of Environmental Protection or a stipulated judgment to remediate pollution on or emanating from such property; (6) the

person responsible for pollution on or emanating from the property is indeterminable, is no longer in existence, is required by law to remediate releases on and emanating from the property or is otherwise unable to perform necessary remediation of such property; and (7) the property and the person meet any other criteria said commissioner deems necessary.

(c) For the purposes of this section, "municipality" means a municipality, economic development agency or entity established under chapter 130 or 132, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132.

(d) Notwithstanding the provisions of subsection (b) of this section, a property owned by a municipality shall not be subject to subdivision (6) of subsection (b) of this section.

(e) Notwithstanding the provisions of subsection (b) of this section, a municipality may request the Commissioner of Economic and Community Development to determine if a property is eligible regardless of the person who currently owns such property.

(f) Notwithstanding subsection (b) of this section, the Commissioner of Economic and Community Development may waive the requirement of subdivision (1) of subsection (b) of this section, if the person or municipality seeking eligibility under this section otherwise demonstrates the eligibility of the property and the value of the redevelopment of such property.

[(b)**]** (g) Upon designation by the Commissioner of Economic and Community Development, in consultation with the Commissioner of Environmental Protection, of an eligible person **[**who**]** or municipality that holds title to such property, such eligible person or municipality

shall (1) enter and remain in the voluntary remediation program established in section 22a-133x; **[**, provided such person will not be a certifying party for the property pursuant to section 22a-134 when acquiring such property;**]** (2) investigate pollution on such property in accordance with prevailing standards and guidelines and remediate pollution on such property in accordance with regulations established for remediation adopted by the Commissioner of Environmental Protection and in accordance with applicable schedules; and (3) eliminate further emanation or migration of any pollution from such property.

(h) An eligible person or municipality who has been accepted by the commissioner or who holds title to an eligible property designated to be in the abandoned **[**brownfields**]** brownfield cleanup program shall not be responsible for investigating or remediating any pollution or source of pollution that has emanated from such property prior to such person taking title to such property, and shall not be liable to the state or any third party for the release of any regulated substance at or from the eligible property prior to taking title to such eligible property except and only to the extent that such applicant caused or contributed to the release of a regulated substance that is subject to remediation or negligently or recklessly exacerbated such condition.

[(c)**]** (i) Any applicant seeking a designation of eligibility for a person or a property under the abandoned brownfields cleanup program shall apply to the Commissioner of Economic and Community Development at such times and on such forms as the commissioner may prescribe.

[(d)**]** (j) Not later than sixty days after receipt of the application, the Commissioner of Economic and Community Development shall determine if the application is complete and shall notify the applicant of such determination.

[(e)**]** (k) Not later than ninety days after determining that the application is complete, the Commissioner of Economic and

Community Development shall determine whether to include the property and applicant in the abandoned brownfields cleanup program.

[(f)**]** (l) Designation of a property in the abandoned **[**brownfields**]** brownfield cleanup program by the Commissioner of Economic and Community Development shall not limit the applicant's or any other person's ability to seek funding for such property under any other brownfield grant or loan program administered by the Department of Economic and Community Development, the Connecticut Development Authority or the Department of Environmental Protection.

(m) Designation of a property in the abandoned brownfield cleanup program by the Commissioner of Economic and Community Development shall exempt such eligible person or eligible municipality from filing as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, as amended by this act, if such real property or prior business operations constitute an establishment.

(n) Upon completion of the requirements of subsection (g) of this section to the satisfaction of the Commissioner of Environmental Protection, such person or municipality shall qualify for a covenant not to sue from the Commissioner of Environmental Protection without fee, pursuant to section 22a-133aa, as amended by this act.

(o) Any person or municipality designated as an eligible person under the abandoned brownfield cleanup program shall be considered an innocent party and shall not be liable to the Commissioner of Environmental Protection or any person under section 22a-432, 22a-433, 22a-451 or 22a-452 or other similar statute or common law for conditions preexisting or existing on the brownfield property as of the date of acquisition or control as long as the person or municipality (1) did not establish, cause or contribute to the discharge, spillage, uncontrolled loss, seepage or filtration of such hazardous substance, material, waste or pollution; (2) does not exacerbate the conditions;

and (3) complies with reporting of significant environmental hazard requirements in section 22a-6u. To the extent that any conditions are exacerbated, the person or municipality shall only be responsible for responding to contamination exacerbated by its negligent or reckless activities.

(p) Any person or municipality that acquires a property in the abandoned brownfield cleanup program shall apply to the Commissioner of Economic and Community Development on a form prescribed by said commissioner to determine if such person or municipality qualifies as an eligible party under the abandoned brownfield cleanup program. If the Commissioner of Economic and Community Development determines that such person or municipality is an eligible party, such eligible party shall be subject to the provisions of this section, and shall receive liability relief pursuant to subsections (h), (m), (n) and (o) of this section.

Sec. 10. Subdivision (1) of section 22a-134 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(1) "Transfer of establishment" means any transaction or proceeding through which an establishment undergoes a change in ownership, but does not mean:

(A) Conveyance or extinguishment of an easement;

(B) Conveyance of an establishment through a foreclosure, as defined in subsection (b) of section 22a-452f, foreclosure of a municipal tax lien or through a tax warrant sale pursuant to section 12-157, an exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or purchase pursuant to a resolution by the legislative body of a municipality authorizing the acquisition through eminent domain for establishments that also meet the definition of a brownfield as defined in section 32-9kk, as amended by this act, or a subsequent transfer by such municipality that has foreclosed on the property, foreclosed municipal tax liens or that has

acquired title to the property through section 12-157, or is within the pilot program established in subsection (c) of section 32-9cc, as amended by this act, or has acquired such property through the exercise of eminent domain pursuant to section 8-128, 8-169e or 8-193 or by condemnation pursuant to section 32-224 or a resolution adopted in accordance with this subparagraph, provided (i) the party acquiring the property from the municipality did not establish, create or contribute to the contamination at the establishment and is not affiliated with any person who established, created or contributed to such contamination or with any person who is or was an owner or certifying party for the establishment, and (ii) on or before the date the party acquires the property from the municipality, such party or municipality enters and subsequently remains in the voluntary remediation program administered by the commissioner pursuant to section 22a-133x and remains in compliance with schedules and approvals issued by the commissioner. For purposes of this subparagraph, subsequent transfer by a municipality includes any transfer to, from or between a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132, a nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or a nonstock corporation or limited liability company controlled or established by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132;

(C) Conveyance of a deed in lieu of foreclosure to a lender, as defined in and that qualifies for the secured lender exemption pursuant to subsection (b) of section 22a-452f;

(D) Conveyance of a security interest, as defined in subdivision (7) of subsection (b) of section 22a-452f;

(E) Termination of a lease and conveyance, assignment or execution of a lease for a period less than ninety-nine years including

conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold, ninety-nine years, including conveyance, assignment or execution of a lease with options or similar terms that will extend the period of the leasehold to ninety-nine years, or from the commencement of the leasehold;

(F) Any change in ownership approved by the Probate Court;

(G) Devolution of title to a surviving joint tenant, or to a trustee, executor or administrator under the terms of a testamentary trust or will, or by intestate succession;

(H) Corporate reorganization not substantially affecting the ownership of the establishment;

(I) The issuance of stock or other securities of an entity which owns or operates an establishment;

(J) The transfer of stock, securities or other ownership interests representing less than forty per cent of the ownership of the entity that owns or operates the establishment;

(K) Any conveyance of an interest in an establishment where the transferor is the sibling, spouse, child, parent, grandparent, child of a sibling or sibling of a parent of the transferee;

(L) Conveyance of an interest in an establishment to a trustee of an inter vivos trust created by the transferor solely for the benefit of one or more siblings, spouses, children, parents, grandchildren, children of a sibling or siblings of a parent of the transferor;

(M) Any conveyance of a portion of a parcel upon which portion no establishment is or has been located and upon which there has not occurred a discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste, provided either the area of such portion is not greater than fifty per cent of the area of such parcel or written notice of such proposed conveyance and an environmental condition

assessment form for such parcel is provided to the commissioner sixty days prior to such conveyance;

(N) Conveyance of a service station, as defined in subdivision (5) of this section;

(O) Any conveyance of an establishment which, prior to July 1, 1997, had been developed solely for residential use and such use has not changed;

(P) Any conveyance of an establishment to any entity created or operating under chapter 130 or 132, or to an urban rehabilitation agency, as defined in section 8-292, or to a municipality under section 32-224, or to the Connecticut Development Authority or any subsidiary of the authority;

(Q) Any conveyance of a parcel in connection with the acquisition of properties to effectuate the development of the overall project, as defined in section 32-651;

(R) The conversion of a general or limited partnership to a limited liability company under section 34-199;

(S) The transfer of general partnership property held in the names of all of its general partners to a general partnership which includes as general partners immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(T) The transfer of general partnership property held in the names of all of its general partners to a limited liability company which includes as members immediately after the transfer all of the same persons as were general partners immediately prior to the transfer;

(U) Acquisition of an establishment by any governmental or quasi-governmental condemning authority;

(V) Conveyance of any real property or business operation that would qualify as an establishment solely as a result of (i) the

generation of more than one hundred kilograms of universal waste in a calendar month, (ii) the storage, handling or transportation of universal waste generated at a different location, or (iii) activities undertaken at a universal waste transfer facility, provided any such real property or business operation does not otherwise qualify as an establishment; there has been no discharge, spillage, uncontrolled loss, seepage or filtration of a universal waste or a constituent of universal waste that is a hazardous substance at or from such real property or business operation; and universal waste is not also recycled, treated, except for treatment of a universal waste pursuant to 40 CFR 273.13(a)(2) or (c)(2) or 40 CFR 273.33 (a)(2) or (c)(2), or disposed of at such real property or business operation; **[**or**]**

(W) Conveyance of a unit in a residential common interest community in accordance with section 22a-134i;

(X) Acquisition of an establishment that is in the abandoned brownfield cleanup program established pursuant to section 32-9*ll*, as amended by this act, and all subsequent transfers of the establishment, provided the establishment is undergoing remediation or is remediated in accordance with subsection (g) of said section 32-9*ll*;

(Y) Any transfer of title from a bankruptcy court or a municipality to a nonprofit organization; or

(Z) Acquisition of an establishment that is in the brownfield remediation and revitalization program and all subsequent transfers of the establishment, provided the establishment is in compliance with the brownfield investigation plan and remediation schedule, the commissioner has issued a no audit letter or successful audit closure letter in response to a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program, or one hundred eighty days has expired since a verification or interim verification submitted regarding the remediation of such establishment under the brownfield remediation and revitalization program without an audit decision

from the Commissioner of Environmental Protection;

Sec. 11. Section 22a-133aa of the general statutes is amended by adding subsection (g) as follows (*Effective from passage*):

(NEW) (g) Any prospective purchaser or municipality remediating property pursuant to the abandoned brownfield cleanup program established pursuant to section 32-9*ll*, as amended by this act, shall qualify for a covenant not to sue from the Commissioner of Environmental Protection without fee. Such covenant not to sue shall be transferable to subsequent owners provided the property is undergoing remediation or is remediated in accordance with subsection (g) of said section 32-9*ll*, as amended by this act.

Sec. 12. Section 22a-133o of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) An owner of land may execute and record an environmental use restriction under sections 22a-133n to 22a-133r, inclusive, on the land records of the municipality in which such land is located if (1) the commissioner has adopted standards for the remediation of contaminated land pursuant to section 22a-133k and adopted regulations pursuant to section 22a-133q, as amended by this act, (2) the commissioner, or in the case of land for which remedial action was supervised under section 22a-133y, a licensed environmental professional, determines, as evidenced by his signature on such restriction, that it is consistent with the purposes and requirements of sections 22a-133n to 22a-133r, inclusive, as amended by this act, and of such standards and regulations, and (3) such restriction will effectively protect public health and the environment from the hazards of pollution.

(b) No owner of land may record an environmental use restriction on the land records of the municipality in which such land is located unless he simultaneously records documents which demonstrate that each person holding an interest in such land or any part thereof, including without limitation each mortgagee, lessee, lienor and

encumbrancer, irrevocably subordinates such interest to the environmental use restriction provided the commissioner may waive such requirement if he finds that the interest in such land is so minor as to be unaffected by the environmental **[**land**]** use restriction. The commissioner shall waive the requirement to obtain subordination agreements for any interest in land that, when acted upon, is not capable of creating a condition contrary to any purpose of such environmental use restriction. An environmental use restriction shall run with land, shall bind the owner of the land and his successors and assigns, and shall be enforceable notwithstanding lack of privity of estate or contract or benefit to particular land.

(c) Within seven days **[**of**]** after executing an environmental use restriction and receiving thereon the signature of the commissioner or licensed environmental professional, as the case may be, the owner of the land involved therein shall record such restriction and documents required under subsection (b) of this section on the land records of the municipality in which such land is located and shall submit to the commissioner a certificate of title certifying that each interest in such land or any part thereof is irrevocably subordinated to the environmental use restriction in accordance with said subsection (b).

(d) An owner of land with respect to which an environmental use restriction applies may be released, wholly or in part, permanently or temporarily, from the limitations of such restriction only with the commissioner's written approval which shall be consistent with the regulations adopted pursuant to section 22a-133q, as amended by this act, and shall be recorded on the land records of the municipality in which such land is located. **[**provided the**]** The commissioner may waive the requirement to record such release if he finds that the activity which is the subject of such release does not affect the overall purpose for which the environmental **[**land**]** use restriction was implemented, or for a temporary release, the activity is sufficiently limited in scope and duration, and does not alter the size of the area subject to the environmental land use restriction. The commissioner shall not approve any such permanent release unless the owner

demonstrates that he has remediated the land, or such portion thereof as would be affected by the release, in accordance with the standards established pursuant to section 22a-133k.

(e) An environmental use restriction shall survive foreclosure of a mortgage, lien or other encumbrance.

Sec. 13. Section 22a-133p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Attorney General, at the request of the commissioner, shall institute a civil action in the superior court for the judicial district of Hartford or for the judicial district wherein the subject land is located for injunctive or other equitable relief to enforce an environmental use restriction or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder or to recover a civil penalty pursuant to subsection (e) of this section.

(b) The commissioner may issue orders pursuant to sections 22a-6, as amended by this act, and 22a-7 to enforce an environmental use restriction or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder.

(c) In any administrative or civil proceeding instituted by the commissioner to enforce an environmental use restriction or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder, any other person may intervene as a matter of right.

(d) In any civil or administrative action to enforce an environmental use restriction or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder, the owner of the subject land, and any lessee thereof, shall be strictly liable for any violation of such restriction or the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder and shall be jointly and severally liable for abating such violation.

(e) Any owner of land with respect to which an environmental use restriction applies, and any lessee of such land, who violates any provision of such restriction or violates the provisions of sections 22a-133n to 22a-133q, inclusive, as amended by this act, and regulations adopted thereunder shall be assessed a civil penalty under section 22a-438. The penalty provided in this subsection shall be in addition to any injunctive or other equitable relief.

Sec. 14. Section 22a-133q of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, to carry out the purposes of sections 22a-133n to 22a-133r, inclusive, as amended by this act. Such regulations may include, but not be limited to, provisions regarding the form, contents, fees, financial surety, monitoring and reporting, filing procedure for, and release from, environmental use restrictions.

Sec. 15. Section 2 of public act 10-135 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established a working group to examine the remediation and development of brownfields in this state, including, but not limited to, the remediation scheme for such properties, permitting issues and liability issues, including those set forth by sections 22a-14 to 22a-20, inclusive, of the general statutes.

(b) The working group shall consist of the following **[**eleven**]** thirteen members, each of whom shall have expertise related to brownfield redevelopment in environmental law, engineering, finance, development, consulting, insurance or another relevant field:

(1) **[**Two**]** Four appointed by the Governor;

(2) One appointed by the president pro tempore of the Senate;

(3) One appointed by the speaker of the House of Representatives;

(4) One appointed by the majority leader of the Senate;

(5) One appointed by the majority leader of the House of Representatives;

(6) One appointed by the minority leader of the Senate;

(7) One appointed by the minority leader of the House of Representatives;

(8) The Commissioner of Economic and Community Development or the commissioner's designee, who shall serve ex officio;

(9) The Commissioner of Environmental Protection or the commissioner's designee, who shall serve ex officio; and

(10) The Secretary of the Office of Policy and Management or the secretary's designee, who shall serve ex officio.

(c) **[**All**]** Any member of the working group as of the effective date of this section shall continue to serve and all new appointments to the working group shall be made no later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(d) The working group shall select chairpersons of the working group. **[**from among the appointed members of the working group.**]** Such chairpersons shall schedule the first meeting of the working group, which shall be held no later than sixty days after the effective date of this section.

(e) On or before January 15, **[**2011**]** 2012, the working group shall report, in accordance with the provisions of section 11-4a of the general statutes, on its findings and recommendations to the Governor and the joint standing **[**committee**]** committees of the General Assembly having cognizance of matters relating to commerce and the environment.

Sec. 16. Section 32-23zz of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) For the purpose of assisting (1) any information technology project, as defined in subsection (ee) of section 32-23d, which is located in an eligible municipality, as defined in subdivision (12) of subsection (a) of section 32-9t, or (2) any remediation project, as defined in subsection (ii) of section 32-23d, the Connecticut Development Authority may, upon a resolution of the legislative body of a municipality, issue and administer bonds which are payable solely or in part from and secured by: (A) A pledge of and lien upon any and all of the income, proceeds, revenues and property of such a project, including the proceeds of grants, loans, advances or contributions from the federal government, the state or any other source, including financial assistance furnished by the municipality or any other public body, (B) taxes or payments or grants in lieu of taxes allocated to and payable into a special fund of the Connecticut Development Authority pursuant to the provisions of subsection (b) of this section, or (C) any combination of the foregoing. Any such bonds of the Connecticut Development Authority shall mature at such time or times not exceeding thirty years from their date of issuance and shall be subject to the general terms and provisions of law applicable to the issuance of bonds by the Connecticut Development Authority, except that such bonds shall be issued without a special capital reserve fund as provided in subsection (b) of section 32-23j and, for purposes of section 32-23f, only the approval of the board of directors of the authority shall be required for the issuance and sale of such bonds. Any pledge made by the municipality or the Connecticut Development Authority for bonds issued as provided in this section shall be valid and binding from the time when the pledge is made, and revenues and other receipts, funds or moneys so pledged and thereafter received by the municipality or the Connecticut Development Authority shall be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the municipality or the Connecticut Development

Authority, even if the parties have no notice of such lien. Recording of the resolution or any other instrument by which such a pledge is created shall not be required. In connection with any such assignment of taxes or payments in lieu of taxes, the Connecticut Development Authority may, if the resolution so provides, exercise the rights provided for in section 12-195h of an assignee for consideration of any lien filed to secure the payment of such taxes or payments in lieu of taxes. All expenses incurred in providing such assistance may be treated as project costs.

(b) Any proceedings authorizing the issuance of bonds under this section may contain a provision that taxes or a specified portion thereof, if any, identified in such authorizing proceedings and levied upon taxable real or personal property, or both, in a project each year, or payments or grants in lieu of such taxes or a specified portion thereof, by or for the benefit of any one or more municipalities, districts or other public taxing agencies, as the case may be, shall be divided as follows: (1) In each fiscal year that portion of the taxes or payments or grants in lieu of taxes which would be produced by applying the then current tax rate of each of the taxing agencies to the total sum of the assessed value of the taxable property in the project on the date of such authorizing proceedings, adjusted in the case of grants in lieu of taxes to reflect the applicable statutory rate of reimbursement, shall be allocated to and when collected shall be paid into the funds of the respective taxing agencies in the same manner as taxes by or for said taxing agencies on all other property are paid; and (2) that portion of the assessed taxes or the payments or grants in lieu of taxes, or both, each fiscal year in excess of the amount referred to in subdivision (1) of this subsection shall be allocated to and when collected shall be paid into a special fund of the Connecticut Development Authority to be used in each fiscal year, in the discretion of the Connecticut Development Authority, to pay the principal of and interest due in such fiscal year on bonds issued by the Connecticut Development Authority to finance, refinance or otherwise assist such project, to purchase bonds issued for such project, or to reimburse the

provider of or reimbursement party with respect to any guarantee, letter of credit, policy of bond insurance, funds deposited in a debt service reserve fund, funds deposited as capitalized interest or other credit enhancement device used to secure payment of debt service on any bonds issued by the Connecticut Development Authority to finance, refinance or otherwise assist such project, to the extent of any payments of debt service made therefrom. Unless and until the total assessed valuation of the taxable property in a project exceeds the total assessed value of the taxable property in such project as shown by the last assessment list referred to in subdivision (1) of this subsection, all of the taxes levied and collected and all of the payments or grants in lieu of taxes due and collected upon the taxable property in such project shall be paid into the funds of the respective taxing agencies. When such bonds and interest thereof, and such debt service reimbursement to the provider of or reimbursement party with respect to such credit enhancement, have been paid in full, all moneys thereafter received from taxes or payments or grants in lieu of taxes upon the taxable property in such development project shall be paid into the funds of the respective taxing agencies in the same manner as taxes on all other property are paid. The total amount of bonds issued pursuant to this section which are payable from grants in lieu of taxes payable by the state shall not exceed an amount of bonds, the debt service on which in any state fiscal year is, in total, equal to one million dollars.

(c) The authority may make grants or provide loans or other forms of financial assistance from the proceeds of special or general obligation notes or bonds of the authority issued without the security of a special capital reserve fund within the meaning of subsection (b) of section 32-23j, which bonds are payable from and secured by, in whole or in part, the pledge and security provided for in section 8-134, 8-192, 32-227 or this section, all on such terms and conditions, including such agreements with the municipality and the developer of the project, as the authority determines to be appropriate in the circumstances, provided any such project in an area designated as an

enterprise zone pursuant to section 32-70 receiving such financial assistance shall be ineligible for any fixed assessment pursuant to section 32-71, and the authority, as a condition of such grant, loan or other financial assistance, may require the waiver, in whole or in part, of any property tax exemption with respect to such project otherwise available under subsection (59) or (60) of section 12-81.

(d) As used in this section, "bonds" means any bonds, including refunding bonds, notes, temporary notes, interim certificates, debentures or other obligations; "legislative body" has the meaning provided in subsection (w) of section 32-222; and "municipality" means a town, city, consolidated town or city or consolidated town and borough.

(e) For purposes of this section, references to the Connecticut Development Authority shall include any subsidiary of the Connecticut Development Authority established pursuant to subsection (l) of section 32-11a, and a municipality may act by and through its implementing agency, as defined in subsection (k) of section 32-222.

[(f) No commitments for new projects shall be approved by the authority under this section on or after July 1, 2012.**]**

[(g)**]** (f) In the case of a remediation project, as defined in subsection (ii) of section 32-23d, that involves buildings that are vacant, underutilized or in deteriorating condition and as to which municipal real property taxes are delinquent, in whole or in part, for more than one fiscal year, the amount determined in accordance with subdivision (1) of subsection (b) of this section may, if the resolution of the municipality so provides, be established at an amount less than the amount so determined, but not less than the amount of municipal property taxes actually paid during the most recently completed fiscal year. If the Connecticut Development Authority issues bonds for the remediation project, the amount established in the resolution shall be used for all purposes of subsection (a) of this section.

Sec. 17. (NEW) (*Effective July 1, 2011*) (a) As used in this section:

(1) "Bona fide prospective purchaser" means a person that acquires ownership of a property after the effective date of this section and establishes by a preponderance of the evidence that:

(A) All disposal of regulated substances at the property occurred before the person acquired the property;

(B) Such person made all appropriate inquiries, as set forth in 40 CFR Part 312, into the previous ownership and uses of the property in accordance with generally accepted good commercial and customary standards and practices, including, but not limited to, the standards and practices set forth in the ASTM Standard Practice for Environmental Site Assessments, Phase I Environmental Site Assessment Process, E1527-05. In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a property inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph;

(C) Such person provides all legally required notices with respect to the discovery or release of any regulated substances at the property;

(D) Such person exercises appropriate care with respect to regulated substances found at the property by taking reasonable steps to (i) stop any continuing release, (ii) prevent any threatened future release, and (iii) prevent or limit human, environmental or natural resource exposure to any previously released regulated substance;

(E) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response actions or natural resource restoration at the property;

(F) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response action; and

(G) Such person complies with any request for information from the Commissioner of Environmental Protection.

(2) "Brownfield" has the same meaning as provided in section 32-9kk of the general statutes, as amended by this act.

(3) "Brownfield investigation plan and remediation schedule" means a plan and schedule for investigation and a schedule for remediation of an eligible property under this section. Such investigation plan and remediation schedule shall include both interim status or other appropriate interim target dates and a date for project completion not later than five years after a licensed environmental professional submits such investigation plan and remediation schedule to the Commissioner of Environmental Protection, provided the Commissioner of Environmental Protection may extend such dates for good cause. The plan shall provide a schedule for activities including, but not limited to, completion of the investigation of the property in accordance with prevailing standards and guidelines, submittal of a complete investigation report, submittal of a detailed written plan for remediation, publication of notice of remedial actions, completion of remediation in accordance with standards adopted by said commissioner pursuant to section 22a-133k of the general statutes, as amended by this act, and submittal to said commissioner of a remedial action report. Except as otherwise provided in this section, in any detailed written plan for remediation submitted under this section, the applicant shall only be required to investigate and remediate conditions existing within the property boundaries and shall not be required to investigate or remediate any pollution or contamination that exists outside of the property's boundaries, including any contamination that may exist or has migrated to sediments, rivers,

streams or off site.

(4) "Commissioner" means the Commissioner of Economic and Community Development.

(5) "Contiguous property owner" means a person who owns real property contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a regulated substance from, real property that is not owned by that person, provided:

(A) With respect to the property owned by such person, such person takes reasonable steps to (i) stop any continuing release of any regulated substance released on or from the property, (ii) prevent any threatened future release of any regulated substance released on or from the property, and (iii) prevent or limit human, environmental or natural resource exposure to any regulated substance released on or from the property;

(B) Such person provides full cooperation, assistance and access to persons authorized to conduct response actions or natural resource restoration at the property from which there has been a release or threatened release, including, but not limited to, the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial response action or natural resource restoration at the property;

(C) Such person complies with any land use restrictions established or relied on in connection with the response action at the property and does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

(D) Such person complies with any request for information from the Commissioner of Environmental Protection; and

(E) Such person provides all legally required notices with respect to the discovery or release of any hazardous substances at the property.

(6) "Distressed municipality" has the same meaning as provided in section 32-9p of the general statutes.

(7) "Economic development agency" means a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 of the general statutes, nonprofit economic development corporation formed to promote the common good, general welfare and economic development of a municipality that is funded, either directly or through in-kind services, in part by a municipality, or nonstock corporation or limited liability company established or controlled by a municipality, municipal economic development agency or entity created or operating under chapter 130 or 132 of the general statutes.

(8) "Innocent landowner" has the same meaning as provided in section 22a-452d of the general statutes.

(9) "Interim verification" has the same meaning as provided in section 22a-134 of the general statutes, as amended by this act.

(10) "Municipality" means any town, city or borough.

(11) "National priorities list" means the list of hazardous waste disposal sites compiled by the United States Environmental Protection Agency pursuant to 42 USC 9605.

(12) "PCB regulations" means the polychlorinated biphenyls manufacturing, processing, distribution in commerce and use prohibitions found at 40 CFR Part 761.

(13) "Person" means any individual, firm, partnership, association, syndicate, company, trust, corporation, limited liability company, municipality, economic development agency, agency or political or administrative subdivision of the state and any other legal entity.

(14) "Principles of smart growth" means standards and objectives that support and encourage smart growth when used to guide actions and decisions, including, but not limited to, standards and criteria for

(A) integrated planning or investment that coordinates tax, transportation, housing, environmental and economic development policies at the state, regional and local level, (B) the reduction of reliance on the property tax by municipalities by creating efficiencies and coordination of services on the regional level while reducing interlocal competition for grand list growth, (C) the redevelopment of existing infrastructure and resources, including, but not limited to, brownfields and historic places, (D) transportation choices that provide alternatives to automobiles, including rail, public transit, bikeways and walking, while reducing energy consumption, (E) the development or preservation of housing affordable to households of varying income in locations proximate to transportation or employment centers or locations compatible with smart growth, (F) concentrated, mixed-use, mixed income development proximate to transit nodes and civic, employment or cultural centers, and (G) the conservation and protection of natural resources by (i) preserving open space, water resources, farmland, environmentally sensitive areas and historic properties, and (ii) furthering energy efficiency.

(15) "Regulated substance" means any element, compound or material that, when added to air, water, soil or sediment, may alter the physical, chemical, biological or other characteristic of such air, water, soil or sediment.

(16) "Release" means any discharge, spillage, uncontrolled loss, seepage, filtration, leakage, injection, escape, dumping, pumping, pouring, emitting, emptying or disposal of a substance.

(17) "Remediation standards" has the same meaning as provided in section 22a-134 of the general statutes, as amended by this act.

(18) "RCRA" means the Resource Conservation and Recovery Act promulgated pursuant to 42 USC.

(19) "Smart growth" means economic, social and environmental development that (A) promotes, through financial and other incentives, economic competitiveness in the state while preserving

natural resources, and (B) uses a collaborative approach to planning, decision-making and evaluation between and among all levels of government and the communities and the constituents they serve.

(20) "State of Connecticut Superfund Priority List" means the list of hazardous waste disposal sites compiled by the Connecticut Department of Environmental Protection pursuant to section 22a-133f of the general statutes.

(21) "Transit-oriented development" has the same meaning as provided in section 13b-79o of the general statutes.

(22) "UST regulations" means regulations adopted pursuant to subsection (d) of section 22a-449 of the general statutes.

(23) "Verification" has the same meaning as provided in section 22a-134 of the general statutes, as amended by this act.

(b) The commissioner shall, within available appropriations, establish a brownfield remediation and revitalization program to provide certain liability protections to program participants. Not more than thirty-two properties a year shall be accepted into the program. Participation in the program shall be by accepted application pursuant to this subsection or by nomination pursuant to subsection (d) of this section. To be considered for acceptance into the program established pursuant to this subsection, an applicant shall submit to the commissioner, on a form prescribed by the commissioner, a certification that: (1) The applicant meets the definition of a bona fide prospective purchaser, innocent land owner or contiguous property owner; (2) the property meets the definition of a brownfield and has been subject to a release of a regulated substance in an amount that is in excess of the remediation standards; (3) the applicant did not establish, create or maintain a source of pollution to the waters of the state for purposes of section 22a-432 of the general statutes and is not responsible pursuant to any other provision of the general statutes for any pollution or source of pollution on the property; (4) the applicant is not affiliated with any person responsible for such pollution or

source of pollution through any direct or indirect familial relationship or any contractual, corporate or financial relationship other than that by which such purchaser's interest in such property is to be conveyed or financed; and (5) the property is not currently the subject of an enforcement action, including any consent order issued by the Department of Environmental Protection or the United States Environmental Protection Agency under any current Department of Environmental Protection or United States Environmental Protection Agency program, listed on the national priorities list, listed on the State of Connecticut Superfund Priority List, or subject to corrective action as may be required by RCRA. The commissioner may review such certifications to ensure accuracy, in consultation with the Commissioner of Environmental Protection, and applications will not be considered if such certifications are found inaccurate.

(c) To ensure a geographic distribution and a diversity of projects and broad access to the brownfield remediation and revitalization program, the commissioner, in consultation with the Commissioner of Environmental Protection, shall review all applications received and determine admission of eligible properties into the brownfield remediation and revitalization program based on state-wide portfolio factors including: (1) Job creation and retention; (2) sustainability; (3) readiness to proceed; (4) geographic distribution of projects; (5) population of the municipality where the property is located; (6) project size; (7) project complexity; (8) duration and degree to which the property has been underused; (9) projected increase to the municipal grand list; (10) consistency of the property as remediated and developed with municipal or regional planning objectives; (11) development plan's support for and furtherance of principles of smart growth or transit-oriented development; and (12) other factors as may be determined by the commissioner. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(d) The commissioner shall accept nominations for participation in the program established pursuant to subsection (b) of this section from a municipality or an economic development agency.

(e) (1) Properties otherwise eligible for the brownfield remediation and revitalization program currently being investigated and remediated in accordance with the state voluntary remediation programs under sections 22a-133x and 22a-133y of the general statutes and the covenant not to sue programs under section 22a-133aa, as amended by this act, or 22a-133bb of the general statutes, as amended by this act, may participate in said program.

(2) Properties otherwise eligible for the brownfield remediation and revitalization program that have been subject to a release requiring action pursuant to the PCB regulations or that have been subject to a release requiring action pursuant to the UST regulations shall not be deemed ineligible, but no provision of this section shall affect any eligible party's obligation under such regulations to investigate or remediate the extent of any such release.

(f) Inclusion of a property within the brownfield remediation and revitalization program by the commissioner shall not limit any person's ability to seek funding for such property under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program. Admittance into the brownfield remediation and revitalization program shall not indicate approval or award of funding requested under any federal, state or municipal grant or loan program, including, but not limited to, any state brownfield grant or loan program.

(g) Any applicant seeking a designation of eligibility for a person or a property under the brownfield remediation and revitalization program shall apply to the commissioner at such times and on such forms as the commissioner may prescribe. The application shall include, but not be limited to, (1) a title search, (2) the Phase I Environmental Site Assessment conducted by or for the bona fide

prospective purchaser, which shall be prepared in accordance with the Department of Environmental Protection's Site Characterization Guidance Document, (3) a current property inspection, (4) documentation demonstrating satisfaction of the eligibility criteria set forth in subsection (b) of this section, (5) information about the project that relates to the state-wide portfolio factors set forth in subsection (c) of this section, and (6) such other information as the commissioner may request to determine admission.

(h) Any applicant accepted into the brownfield remediation and revitalization program by the commissioner shall pay the Commissioner of Environmental Protection a fee equal to five per cent of the assessed value of the land, as stated on the last-completed grand list of the relevant town. The fee shall be paid in two installments, each equal to fifty per cent of such fee, subject to potential reductions as specified in subsection (i) of this section. The first installment shall be due within one hundred eighty days of being notified that the application has been accepted by the commissioner. The second installment shall be due not later than four years of being notified that the application has been accepted by the commissioner. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established pursuant to section 22a-133t of the general statutes.

(i) (1) The first installment of the fee in subsection (h) of this section shall be reduced by ten per cent for any eligible party that completes and submits to the Commissioner of Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form prescribed by said commissioner, that the investigation of the property has been completed in accordance with prevailing standards and guidelines within one hundred eighty days after the date the application is accepted by the commissioner.

(2) The second installment of the fee in subsection (h) of this section shall be eliminated for any eligible party that submits the remedial action report and verification or interim verification to the

Commissioner of Environmental Protection within four years after the date the application is accepted by the commissioner. In the event an eligible party submits a request for Commissioner of Environmental Protection approval, where such approval is required pursuant to the remediation standard and where said commissioner issues a decision on such request beyond sixty days after submittal, such four-year period shall be extended by the number of days equal to the number of days between the sixtieth day and the date a decision is issued by said commissioner, but not including the number of days that a request by said commissioner for supplemental information remains pending with the eligible party.

(3) The second installment of the fee in subsection (h) of this section shall be reduced by, or any eligible party shall receive a refund in the amount equal to, twice the reasonable environmental service costs of such investigation, as determined by the Commissioner of Environmental Protection, for any eligible party that completes and submits to the Commissioner of Environmental Protection documentation, approved in writing by a licensed environmental professional and on a form that may be prescribed by said commissioner, that the investigation of the nature and extent of any contamination that has migrated from the property has been completed in accordance with prevailing standards and guidelines. Said refund shall not exceed the amount of the second installment of the fee in subsection (h) of this section.

(4) No municipality or economic development agency seeking designation of eligibility shall be required to pay a fee, provided the municipality or economic development agency shall collect and pay to the Commissioner of Environmental Protection the fee in subsection (h) of this section upon transfer of the property to another person for purposes of development.

(5) A municipality or economic development agency may submit a fee waiver request to the commissioner to waive a portion or the entire fee for an eligible property not owned by the municipality and located

within that municipality. The commissioner, at their discretion, shall consider the following factors in determining whether to approve a fee waiver or reduction: (A) Location of the eligible project within a distressed municipality; (B) demonstration by the municipality or economic development agency that the project is of significant economic impact; (C) demonstration by the municipality or economic development agency that the project has a significant community benefit to the municipality; (D) demonstration that the eligible party is a governmental or nonprofit entity; and (E) demonstration that the fee required will have a detrimental effect on the overall success of the project.

(j) A person whose application has been accepted into the brownfield remediation and revitalization program shall not be liable to the state or any third party for the release of any regulated substance at or from the eligible property except and only to the extent that such applicant (A) caused or contributed to the release of a regulated substance that is subject to remediation or exacerbated such condition, or (B) the Commissioner of Environmental Protection determines the existence of any of the conditions set forth in subdivision (4) of subsection (n) of this section.

(k) (1) A person whose application to the brownfield remediation and revitalization program has been accepted by the commissioner (A) shall investigate the release or threatened release of any regulated substance within the boundaries of the property in accordance with prevailing standards and guidelines and remediate such release or threatened release within the boundaries of such property in accordance with the brownfield investigation plan and remediation schedule and this section, and (B) shall not be required to characterize, abate and remediate the release of a regulated substance beyond the boundary of the eligible property, except for releases caused or contributed to by such person.

(2) Not later than one hundred eighty days after the commissioner accepts the application, the eligible party shall submit to the

commissioner and the Commissioner of Environmental Protection a brownfield investigation plan and remediation schedule that is signed and stamped by a licensed environmental professional. Unless otherwise approved in writing by the Commissioner of Environmental Protection, the eligible party shall submit a brownfield investigation plan and remediation schedule which provides that the investigation shall be completed within two years of the application being accepted by the commissioner, remediation shall be initiated not later than three years from the date of the application being accepted by the commissioner and remediation shall be completed sufficiently to support either a verification or interim verification within eight years of the application being accepted by the commissioner. The schedule shall also include a schedule for providing public notice of the remediation prior to the initiation of such remediation in accordance with subdivision (1) of subsection (k) of this section. Not later than two years after the application is accepted by the commissioner, unless the Commissioner of Environmental Protection has specified a later day, in writing, the eligible party shall submit to the Commissioner of Environmental Protection documentation, approved in writing by a licensed environmental professional and in a form prescribed by the Commissioner of Environmental Protection, that the investigation of the property has been completed in accordance with prevailing standards and guidelines. Not later than three years after the application is accepted by the commissioner, unless the Commissioner of Environmental Protection has specified a later day, in writing, the eligible party shall notify the Commissioner of Environmental Protection and the commissioner in a form prescribed by the Commissioner of Environmental Protection that the remediation has been initiated, and shall submit to the Commissioner of Environmental Protection a remedial action plan, approved in writing by a licensed environmental professional in a form prescribed by the Commissioner of Environmental Protection. Not later than eight years after the application is accepted by the commissioner, unless the Commissioner of Environmental Protection has specified a later day, in writing, the eligible party shall complete remediation of the property and submit

the remedial action report and verification or interim verification to the Commissioner of Environmental Protection and the commissioner. The Commissioner of Environmental Protection shall grant a reasonable extension if the eligible party demonstrates to the satisfaction of the Commissioner of Environmental Protection that: (A) Such eligible party has made reasonable progress toward investigation and remediation of the eligible property; and (B) despite best efforts, circumstances beyond the control of the eligible party have significantly delayed the remediation of the eligible property.

(3) An eligible party who submits an interim verification for an eligible property, and any subsequent owner of such eligible property, shall, until the remediation standards for groundwater are achieved, (A) operate and maintain the long-term remedy for groundwater in accordance with the remedial action plan, the interim verification and any approvals issued by the Commissioner of Environmental Protection, (B) prevent exposure to any groundwater plume containing a regulated substance in excess of the remediation standards on the property, (C) take all reasonable action to contain any groundwater plume on the property, and (D) submit annual status reports to the Commissioner of Environmental Protection and the commissioner.

(4) Before commencement of remedial action pursuant to the plan and schedule, the eligible party shall: (A) Publish notice of the remedial action in a newspaper having a substantial circulation in the town where the property is located, (B) notify the director of health of the municipality where the property is located, and (C) either (i) erect and maintain for at least thirty days in a legible condition a sign not less than six feet by four feet on the property, which shall be clearly visible from the public highway and shall include the words "ENVIRONMENTAL CLEAN-UP IN PROGRESS AT THIS SITE. FOR FURTHER INFORMATION CONTACT:" and include a telephone number for an office from which any interested person may obtain additional information about the remedial action, or (ii) mail notice of the remedial action to each owner of record of property which abuts such property, at the address on the last-completed grand list of the

relevant town. Public comments shall be directed to the eligible party for a thirty-day period starting with the last provided public notice provision and such eligible party shall provide all comments and any responses to the Commissioner of Environmental Protection prior to commencing remedial action.

(5) The remedial action shall be conducted under the supervision of a licensed environmental professional and the remedial action report shall be submitted to the commissioner and the Commissioner of Environmental Protection signed and stamped by a licensed environmental professional. In such report, the licensed environmental professional shall include a detailed description of the remedial actions taken and issue a verification or interim verification, in which he or she shall render an opinion, in accordance with the standard of care provided in subsection (c) of section 22a-133w of the general statutes, that the action taken to contain, remove or mitigate the release of regulated substances within the boundaries of such property is in accordance with the remediation standards.

(6) All applications for permits required to implement such plan and schedule in this section shall be submitted to the permit ombudsman within the Department of Economic and Community Development.

(7) Each eligible party participating in the brownfield remediation and revitalization program shall maintain all records related to its implementation of such plan and schedule and completion of the remedial action of the property for a period of not less than ten years and shall make such records available to the commissioner or the Commissioner of Environmental Protection at any time upon request by either.

(8) (A) Within sixty days of receiving a remedial action report signed and stamped by a licensed environmental professional and a verification or interim verification, the Commissioner of Environmental Protection shall notify the eligible party and the

commissioner whether the Commissioner of Environmental Protection will conduct an audit of such remedial action. Any such audit shall be conducted not later than one hundred eighty days after the Commissioner of Environmental Protection receives a remedial action report signed and stamped by a licensed environmental professional and a verification or interim verification. Within fourteen days of completion of an audit, the Commissioner of Environmental Protection shall send written audit findings to the eligibly party, the commissioner and the licensed environmental professional. The audit findings may approve or disapprove the report, provided any disapproval shall set forth the reasons for such disapproval.

(B) The Commissioner of Environmental Protection may request additional information during an audit conducted pursuant to this subdivision. If such information has not been provided to said commissioner within fourteen days of such request, the time frame for said commissioner to complete the audit shall be suspended until the information is provided to said commissioner. The Commissioner of Environmental Protection may choose to conduct such audit if and when the eligible party fails to provide a response to said commissioner's request for additional information within sixty days.

(C) The Commissioner of Environmental Protection shall not conduct an audit of a verification or interim verification pursuant to this subdivision after one hundred eighty days from receipt of such verification unless (i) said commissioner has reason to believe that a verification was obtained through the submittal of materially inaccurate or erroneous information, or otherwise misleading information material to the verification or that material misrepresentations were made in connection with the submittal of the verification, (ii) any post-verification monitoring or operations and maintenance is required as part of a verification and has not been done, (iii) a verification that relies upon an environmental land use restriction was not recorded on the land records of the municipality in which such land is located in accordance with section 22a-133o of the general statutes, as amended by this act, of the general statutes and

applicable regulations, (iv) said commissioner determines that there has been a violation of law material to the verification, or (v) said commissioner determines that information exists indicating that the remediation may have failed to prevent a substantial threat to public health or the environment for releases on the property.

(l) Not later than sixty days after receiving a notice of disapproval or a verification or interim verification from the Commissioner of Environmental Protection, the eligible party shall submit to said commissioner and to the commissioner a report of cure of noted deficiencies. Within sixty days after receiving such report of cure of noted deficiencies by said commissioner, said commissioner shall issue a successful audit closure letter or a written disapproval of such report of cure of noted deficiencies.

(m) Before approving a verification or interim verification, the Commissioner of Environmental Protection may enter into a memorandum of understanding with the eligible party with regard to any further remedial action or monitoring activities on or at such property that said commissioner deems necessary for the protection of human health or the environment.

(n) (1) An eligible party who has been accepted into the brownfield remediation and revitalization program shall have no obligation as part of its plan and schedule to characterize, abate and remediate any plume of a regulated substance outside the boundaries of the subject property, provided the notification requirements of section 22a-6u of the general statutes pertaining to significant environmental hazards shall continue to apply to the property and the eligible party shall not be required to characterize, abate or remediate any such significant environmental hazard outside the boundaries of the subject property unless such significant environmental hazard arises from the actions of the eligible party after its acquisition of or control over the property from which such significant environmental hazard has emanated outside its own boundaries. If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or

otherwise transfers its ownership of the subject property and such eligible party is in compliance with the provisions of this section and the brownfield investigation plan and remediation schedule at the time of conveyance or transfer of ownership, the provisions of this section shall apply to such transferee, if such transferee meets the eligibility criteria set forth in this section, pays the fee required by this section and complies with all the obligations undertaken by the eligible party under this section. In such case, all references to applicant or eligible party shall mean the subsequent owner or transferee.

(2) After the Commissioner of Environmental Protection issues either a no audit letter or a successful audit closure letter, or no audit decision has been made by said commissioner within one hundred eighty days after the submittal of the remedial action report and verification or interim verification, such eligible party shall not be liable to the state or any third party for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule, and (B) historical off-site impacts including air deposition, waste disposal, impacts to sediments and natural resource damages. No eligible party shall be afforded any relief from liability such eligible party may have from a release requiring action pursuant to the PCB regulations or a release requiring action pursuant to the UST regulations.

(3) The provisions of this section concerning liability shall extend to any person who acquires title to all or part of the property for which a remedial action report and verification or interim verification have been submitted pursuant to this section, provided (A) there is payment of a fee of ten thousand dollars to said commissioner for each such extension, (B) such person acquiring all or part of the property meets the criteria of this section, and (C) the Commissioner of Environmental Protection has issued either a successful audit closure letter or no audit letter, or no audit decision has been made by said commissioner within one hundred eighty days after the submittal of the remedial action report and verification or interim verification. No municipality or

economic development agency that acquires title to all or part of the property shall be required to pay a fee, provided the municipality or economic development agency shall collect and pay the fee upon transfer of the property to another person for purposes of development. Such fee shall be deposited into the Special Contaminated Property Remediation and Insurance Fund established under section 22a-133t of the general statutes, and such funds shall be for the exclusive use by the Department of Environmental Protection.

(4) Neither a successful audit closure nor no audit letter issued pursuant to this section, nor the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Environmental Protection, shall preclude said commissioner from taking any appropriate action, including, but not limited to, any action to require remediation of the property by the eligible party or, as applicable, to its successor, if said commissioner determines that:

(A) The successful audit closure, no audit letter, or the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Environmental Protection was based on information provided by the person submitting such remedial action report and verification or interim verification that the Commissioner of Environmental Protection can show that such person knew, or had reason to know, was false or misleading, and, in the case of the successor to an applicant, that such successor was aware or had reason to know that such information was false or misleading;

(B) New information confirms the existence of previously unknown contamination that resulted from a release that occurred before the date that an application has been accepted into the brownfield remediation and revitalization program;

(C) The eligible party who received the successful audit closure or no audit letter or where one hundred eighty days lapsed without an

audit decision by the Commissioner of Environmental Protection has materially failed to complete the remedial action required by the brownfield investigation plan and remediation schedule or to carry out or comply with monitoring, maintenance or operating requirements pertinent to a remedial action including the requirements of any environmental land use restriction; or

(D) The threat to human health or the environment is increased beyond an acceptable level due to substantial changes in exposure conditions at such property, including, but not limited to, a change from nonresidential to residential use of such property.

(5) If an eligible party who has been accepted into the brownfield remediation and revitalization program conveys or otherwise transfers all or part of its ownership interest in the subject property at any time before the issuance of a successful audit closure or no audit letter or the expiration of one hundred eighty days after the submittal of the remedial action report and verification or interim verification without an audit decision by the Commissioner of Environmental Protection, the eligible party conveying or otherwise transferring its ownership interest shall not be liable to the state or any third party for (A) costs incurred in the remediation of, equitable relief relating to, or damages resulting from the release of regulated substances addressed in the brownfield investigation plan and remediation schedule, and (B) historical off-site impacts including air deposition, waste disposal, impacts to sediments and natural resource damages, provided the eligible party complied with its obligations under this section during the period when the eligible party held an ownership interest in the subject property. Nothing in this subsection shall provide any relief from liability such eligible party may have related to a release requiring action pursuant to the PCB regulations, or a release requiring action pursuant to the UST regulations.

(6) Upon the Commissioner of Environmental Protection's issuance of a successful audit closure letter, no audit letter, or one hundred eighty days have passed since the submittal of a verification or interim

verification and such commissioner has not audited the verification or interim verification, the immediate prior owner regardless of its own eligibility to participate in the comprehensive brownfield remediation and revitalization program shall have no liability to the state or any third party for any future investigation and remediation of the release of any regulated substance at the eligible property addressed in the verification or interim verification, provided the immediate prior owner has complied with any legal obligation such owner had with respect to investigation and remediation of releases at and from the property, and provided further the immediate prior owner shall retain any and all liability such immediate prior owner would otherwise have for the investigation and remediation of the release of any regulated substance beyond the boundary of the eligible property. In any event, the immediate prior owner shall remain liable for (A) penalties or fines, if any, relating to the release of any regulated substance at or from the eligible property, (B) costs and expenses, if any, recoverable or reimbursable pursuant to sections 22a-134b, 22a-451 and 22a-452 of the general statutes, and (C) obligations of the immediate prior owner as a certifying party on a Form III or IV submitted pursuant to sections 22a-134 to 22a-1334e, inclusive, of the general statutes, as amended by this act.

(o) A person whose application to the brownfield remediation and revitalization program has been accepted by the commissioner or any subsequent eligible party whose application to the brownfield remediation and revitalization program has been accepted by the commissioner shall be exempt for filing as an establishment pursuant to sections 22a-134a to 22a-134d, inclusive, of the general statutes, as amended by this act, if such real property or prior business operations constitute an establishment. Nothing in this section shall be construed to alter any existing legal requirement applicable to any certifying party at a property under sections 22a-134, as amended by this act, and 22a-134a to 22a-134e, inclusive, of the general statutes, as amended by this act.

(p) Notwithstanding the provisions of this section, eligible parties

shall investigate and remediate, and remain subject to all applicable statutes and requirements, the extent of any new release that occurs during their ownership of the property.

Sec. 18. Subdivision (1) of subsection (g) of section 2 of public act 05-289 is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(1) Notwithstanding any provision of the general statutes, including sections 7-324 to 7-329, inclusive, whenever the district has authorized the acquisition or construction of the improvements or has made an appropriation therefor, the district may authorize the issuance of (A) up to one hundred ninety million dollars of bonds, notes or other obligations **[**to finance**]** which may be secured as to both principal and interest by (i) the full faith and credit of the district, (ii) fees, revenues or benefit assessments, or (iii) a combination of clause (i) and (ii) of this subparagraph; (B) bonds, notes or obligations exclusively secured as to both principal and interest by fees, revenues, benefit assessments or charges imposed by the district in relation to the property financed by the bonds, notes or obligations; and (C) bonds, notes or obligations to refund outstanding bonds, notes or obligations of the district. All such bonds shall be issued to finance or refinance the cost of the improvements, the creation and maintenance of reserves required to sell the bonds, notes or obligations and the cost of issuance of the bonds, notes or obligations, provided no bonds shall be issued prior to the district entering into an interlocal agreement with the city of Bridgeport in accordance with the procedures provided by section 7-339c of the general statutes, including at least one public hearing on the proposed agreement and ratification by the city council. **[**The bonds, notes or other obligations may be secured as to both principal or interest by (A) the full faith and credit of the district, (B) fees, revenues or benefit assessments, or (C) a combination of subparagraphs (A) and (B) of this subdivision.**]** Such bonds, notes or obligations shall be authorized by resolution of the board. The district is authorized to secure such bonds by the full faith and credit of the district or by a pledge of or lien on all or part of its fees, revenues, **[**fees

or**]** benefit assessments or charges. The bonds of each issue shall be dated, shall bear interest at the rates and shall mature at the time or times not exceeding thirty years from their date or dates, as determined by the board, and may be redeemable before maturity, at the option of the board, at the price or prices and under the terms and conditions fixed by the board before the issuance of the bonds. The board shall determine the form of the bonds, and the manner of execution of the bonds, and shall fix the denomination of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within the state of Connecticut and other locations as designated by the board. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery.

Sec. 19. Section 52-557f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

As used in sections 52-557f to 52-557i, inclusive:

(1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land, except that "charge" does not include tax revenue collected pursuant to title 12 by any owner;

(2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;

(3) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises and includes any municipality, as defined in section 7-148, any district, as defined in section 7-324, any metropolitan district created by special act or pursuant to sections 7-333 to 7-339, inclusive, and any railroad company;

(4) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, snow skiing, ice skating, sledding, hang gliding, sport parachuting, hot air ballooning and viewing or enjoying historical, archaeological, scenic or scientific sites.

Sec. 20. (NEW) (*Effective October 1, 2011*) (a) For purposes of this section, "charge" has the same meaning as provided in section 52-557f of the general statutes, as amended by this act, "hazardous waste" has the same meaning as provided in section 22a-115 of the general statutes, and "pollution" has the same meaning as provided in section 22a-423 of the general statutes.

(b) Notwithstanding any provision of the general statutes or regulations to the contrary, any municipality with a population greater than ninety thousand people that acquires an easement over property of another that is duly recorded on the land records for the purpose of making the property included in such easement available to the public for recreational use without charge, rent, fee or other commercial service shall not be liable to the state for any fines, penalties or costs of investigation or remediation with respect to any pollution or source of pollution or contamination by hazardous waste on or emanating from such easement area, provided such pollution or source of pollution or contamination by hazardous waste (1) occurred or existed on such property prior to the municipality's acquisition of such easement, and (2) was not caused or created by or contributed to by such municipality or by an agent of such municipality and provided such municipality, or the use of such easement area by the public, does not contribute to or exacerbate such existing pollution or source of pollution or contamination by hazardous waste or prevent the investigation or remediation of such pollution or contamination. Such municipality shall not interfere with, and shall provide access to, other persons who are investigating and remediating any such pollution or source of pollution or contamination by hazardous waste. This section does not limit or affect the liability of the owner or operator of the

property on which such easement is located under any other provision of law, including, but not limited to, any obligation to address any such pollution or source of pollution or contamination by hazardous waste, or from any fines or penalties.

(c) Any municipality that acquires an easement for recreational use as provided in subsection (b) of this section shall ensure that any pollution or source of pollution or contamination from hazardous waste, on or emanating from such easement area, does not pose a risk to the public based upon the use of such easement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2011*	32-9cc
Sec. 2	*July 1, 2011*	32-9ee
Sec. 3	*July 1, 2011*	32-9ff
Sec. 4	*from passage*	22a-134a
Sec. 5	*from passage*	22a-426
Sec. 6	*from passage*	New section
Sec. 7	*July 1, 2011*	32-9kk(a)(1)
Sec. 8	*from passage*	22a-6
Sec. 9	*July 1, 2011*	32-*9ll*
Sec. 10	*from passage*	22a-134(1)
Sec. 11	*from passage*	22a-133aa
Sec. 12	*from passage*	22a-133o
Sec. 13	*from passage*	22a-133p
Sec. 14	*from passage*	22a-133q
Sec. 15	*from passage*	PA 10-135, Sec. 2
Sec. 16	*July 1, 2011*	32-23zz
Sec. 17	*July 1, 2011*	New section
Sec. 18	*July 1, 2011*	PA 05-289, Sec. 2(g)(1)
Sec. 19	*October 1, 2011*	52-557f
Sec. 20	*October 1, 2011*	New section

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 $	FY 13 $
Various State Agencies	Various - Savings	Potential Significant	Potential Significant
Department of Environmental Protection	GF - Revenue Gain	At least 100,000	At least 100,000
Department of Economic & Community Development	GF - Potential Cost	51,500	51,500
Comptroller Misc. Accounts (Fringe Benefits)[1]	GF - Potential Cost	12,236	12,236
Legislative Mgmt.	GF - Potential Cost	Less than 1,000	Less than 1,000
Department of Revenue Services	GF - Potential Revenue Gain	See Below	See Below
Department of Environmental Protection	GF - Revenue Loss	Indeterminate	Indeterminate

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 $	FY 13 $
Various Municipalities	Potential Savings / Cost Avoidance	Significant	Significant

Explanation

The bill results in a cost and revenue loss to the state by making various changes to the laws and programs governing brownfield remediation projects.

Section 9 exempts entities and state agencies from remitting various

[1] The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes is 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

fees to the Department of Environmental Protection (DEP). This will result in a revenue loss to DEP, the extent of which is unknown at this time. The bill could also result in a savings to state agencies that remediate state-owned properties that do not have to remit form application fees under the bill's provisions.

Fees for: (1) an environmental condition assessment form is $3,250; and (2) the fee for a covenant not to sue prospective purchasers or owners of contaminated land form is 3% of the appraised value of the property as if it were uncontaminated. Transfer fees are as follows: (1) filing a Form I is $75; (2) filing a Form II is $1,320; (3) filing an initial Form III on or after October 1, 1995 is $3,000 with subsequent Form III fees ranging from $3,250 to $34,750 depending on the additional amount of remediation required; (4) filing a Form IV ranges from $3,250 to $17,500 dependant upon the amount of remediation required.

Sections 10 & 12 also consider a municipality as an innocent party regarding preexisting contamination conditions only to the extent that it was not negligent or reckless. It also states that municipalities qualify for a covenant not to sue without fee from DEP. Thus, it could result in significant savings to municipalities for litigation and any resulting liability. Municipalities could realize a savings from exemption of remitting certain fees (the amount of which is noted above).

Section 16 increases, from 11 to 13, the membership on the working group established in PA 10-135. This may result in an additional cost to the Office of Legislative Management or other state agencies of up to $1,000 in both FY 12 and FY 13 to the extent that these two new task force members seek mileage reimbursement. The current rate of mileage reimbursement is 51 cents per mile.

Section 17 establishes a new liability protection program under the OBRD. The Department of Economic and Community Development requires one Environmental Analyst position at a total cost of $63,736 ($51,500 salary and $12,236 in fringe benefits) to administer this

program.

The bill also results in a revenue gain to DEP in both FY 12 and FY 13 since it establishes a new liability protection program within the OBRD. The program may accept up to 32 properties per year with a fee to be paid worth 5% of the assessed value of the property. While the actual revenue gain is dependent upon the assessed value of the 32 properties, it is anticipated that the revenue gain would be at least $100,000. This provision may also result in additional revenue in subsequent years since it requires a $10,000 fee upon transfer of the property. Municipalities are exempt from remittance of this fee.

Section 18 eliminates the sunset date for the Connecticut Development Authority's (CDA) tax incremental financing (TIF) program. To the extent that this extension of the program enhances the ability of large scale projects to be financed, there is a potential for grand list expansion in those municipalities.

This could also result in an increase in state revenue collections if it produces economic development that leads to an increase in the state's tax base.

Expanding the TIF programs may result in costs to CDA, a quasi-state agency, if towns submit applications for TIF projects that do not subsequently receive funding. Under the program, towns are required to reimburse the agency for expenses associated with the statutory evaluation process, including a financial assessment, a revenue impact assessment and legal fees. However if for any reason the project does not receive TIF funding, the agency's costs are not reimbursed.

Sections 19 – 20 set conditions protecting large municipalities (population greater than 90,000) from liability to the state for pollution or hazardous waste on certain property for which they acquire easement. This results in a potential municipal cost avoidance, to the extent that they are not held liable for any fines, penalties, or costs associated with investigating or remediating such property.

House "A" modifies the bill by:

1) eliminating the requirement that a director be appointed to the Office of Brownfield and Remediation Development (ORBD). This reduces the cost by up to 109,527 in FY 12 and FY 13 to the Department of Economic and Community Development;

2) increasing the amount of properties, from 20 to 32, that may be accepted into the liability protection program. This is anticipated to result in an additional revenue gain to the state, the amount of which cannot be determined at this time;

3) requiring the new liability protection program under the OBRD to be established within available appropriations. To the extent that DECD reallocates funds and staff to perform such tasks there could be a resulting fiscal impact to other programs. The potential amount reallocated could be up to $63,736 ($51,500 salary and $12,236 in fringe benefits) related to one Environmental Analyst position; and

4) setting conditions protecting large municipalities (population greater than 90,000) from liability to the state for pollution or hazardous waste on certain property for which they acquire easement. The fiscal impact is listed under Sections 19 – 20 above.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 6526 (as amended by House "A")*

AN ACT CONCERNING BROWNFIELD REMEDIATION AND DEVELOPMENT AS AN ECONOMIC DRIVER.

SUMMARY:

This bill makes many changes to the laws and programs governing the investigation and remediation of contaminated property (i.e., brownfields). It specifically:

1. updates the Office of Brownfield Remediation and Development's (OBRD) powers and duties;

2. makes permanent the municipal brownfield pilot program;

3. exempts "certifying parties" under the Transfer Act from investigating and remediating contamination that occurs after the property was remediated;

4. allows the environmental protection commissioner to reclassify surface and ground water beginning March 1, 2011;

5. requires the commissioner to evaluate the state's brownfield programs and laws;

6. makes more brownfields eligible for state funds and subject to regulatory requirements;

7. exempts government agencies and private organizations from paying Department of Environmental Protection (DEP) fees when cleaning up brownfields;

8. expands the range of benefits and eligible entities under the

Abandoned Brownfield Cleanup (ABC) Program;

9. exempts municipalities and the bankruptcy court from the Transfer Act when transferring titles to nonprofit organizations;

10. allows the DEP commissioner to waive some of the requirements for recording environmental use restrictions and releasing parties from their requirements;

11. extends the term of the brownfield working group;

12. eliminates the sunset date for funding new projects under the Connecticut Development Authority's (CDA) tax increment financing program;

13. establishes a program protecting parties investigating and remediating brownfields from liability to the state and third parties;

14. allows Bridgeport's special taxing district to issue bonds to finance property improvements backed by the revenue the improvements generate;

15. limits the liability of municipalities, special taxing districts, and metropolitan districts that do not charge the public for using their land for recreation purposes; and

16. exempts large municipalities from clean-up costs, fines, and penalties when they acquire an easement over a property and allow the public to use it without charge for recreation.

*House Amendment "A" makes many technical and substantive changes to the provisions regarding brownfield remediation and adds the provisions regarding Bridgeport's special taxing district and limiting municipal liability on land that the public may access, without charge, for recreation.

EFFECTIVE DATE: Various, see below

§ 1 — OBRD

The bill explicitly requires OBRD to promote and encourage people and organizations to develop and redevelop brownfields. It also updates OBRD's statutory duties, requiring it to maintain an informational website and cooperate with state and local agencies and individuals developing and administering brownfield programs, reaching out to the community, coordinating regional brownfield clean-up efforts, seeking federal funds, and implementing other brownfield redevelopment initiatives.

The bill requires the Office of Policy and Management (OPM) secretary to help OBRD fulfill its mission. Under current law, the executive director of the Connecticut Development Authority and the commissioners of environmental protection, economic and community development, and public health must execute a memorandum of understanding (1) specifying their respective duties with respect to the office and (2) assigning one or more staff members to act as a liaison with OBRD. The bill requires the OPM secretary to become part of the agreement and assign staff liaison to OBRD.

EFFECTIVE DATE: July 1, 2011

§§1-3 — MUNICIPAL BROWNFIELD PROGRAM

Assistance

The bill makes permanent the pilot program providing grants and protection from liability to municipalities for investigating and remediating brownfields and renames it, the Municipal Brownfield Grant Program. Current law authorizes the program to fund brownfield projects in five municipalities, four based on population criteria and one without regard to population.

In making the program permanent, the bill explicitly makes the commissioner responsible for approving projects, allows her to approve more projects, and expands the range of eligible projects.

Current law allows the program to fund up to five projects. The bill

allows the commissioner to annually identify brownfields for remediation and select up to six brownfields per funding round, a process the bill does not describe. She must choose four brownfields based on current law's population criteria and two, rather than one, without regard to population. As under current law, she must fund the brownfields within available appropriations.

Besides increasing the number of projects the commissioner may approve, the bill expands the range of eligible projects. The program is currently open to abandoned and underutilized sites where the need to remediate contaminated soil and ground water complicates their redevelopment and reuse. The bill extends eligibility to sites with contaminated buildings. It also extends it to sites where contamination prevents them from being expanded, redeveloped, or reused.

Lastly, the bill transfers control over the program's fund account from OBRD to the DECD commissioner.

Verification of Remediation

By law, municipalities investigating and remediating brownfields under the program must have DEP or a licensed environmental professional (LEP) supervise the work. But current law requires DEP to indicate if:

1. the remedial work was completed;
2. the site meets the remediation standards; and
3. no further work is needed, except onsite monitoring or recording an environmental land use restriction.

When an LEP supervises, the bill explicitly allows the LEP to make these findings. It also prohibits the LEP and DEP from finding that no further work is needed if a required land use restriction has not been recorded.

The bill implicitly gives the DEP commissioner the option of

auditing the work and requires him to notify the municipality within 90 days of the LEP report about whether he will do so.

EFFECTIVE DATE: July 1, 2011

§ 4 — CERTIFYING PARTY'S RESPONSIBILITY UNDER THE TRANSFER ACT

The bill exempts certifying parties under the Transfer Act from investigating and remediating contamination that occurs after they remediated the property.

By law, parties to the sale or transfer of a potentially contaminated property must notify DEP about the transaction, their knowledge about the property's condition, and the party that will investigate and, if necessary, remediate the property (i.e., the certifying party). The certifying party must provide this information on DEP's Form III. When the property is remediated, the certifying party must notify DEP to that effect by submitting a Form IV.

The bill specifies that the certifying party does not have to investigate or clean up any real or potential contamination that occurs after (1) data was collected at the site (i.e., completed Phase II investigation) or (2) from this time or after the Form III or Form IV was filed, whichever is later.

EFFECTIVE DATE: Upon passage

§ 5 — SURFACE AND GROUND WATER RECLASSIFICATION

The bill allows the DEP commissioner to reclassify surface and ground water beginning March 1, 2011, consistent with the state's water quality standards and in compliance with applicable federal requirements. It specifies the procedures he must follow when reclassifying these waters, which vary depending on whether he initiates the reclassification or responds to a person who requests it. In either case, the commissioner must hold a public hearing, which under the bill is not a contested case. (A contested case is a proceeding in which an agency must determine a party's rights, duties, or privileges

after a hearing.)

If the commissioner initiates the reclassification, he must hold a hearing on the proposal (1) publishing a newspaper notice about its time, date, and place and (2) notifying each affected municipality's chief executive officer and public health director by certified mail within 30 days before the hearing. After the hearing, the commissioner must provide notice of his decision in the *Connecticut Law Journal* and to the affected municipalities' chief elected officials and health directors.

People requesting a reclassification must apply to the commissioner and provide any information he requests. The commissioner must publish a notice about the hearing at the requestor's expense at least 30 days before the hearing. The notice must identify the requestor and the affected waters, indicate the commissioner's tentative decision about the proposed reclassification, and provide other information about the hearing the bill requires. The notice must be mailed to the chief executive officers and the public health directors of the affected municipalities at least 30 days before the hearing. After the hearing, the commissioner must provide notice of his decision the same way he provides notice of decisions regarding the reclassifications he initiates.

EFFECTIVE DATE: Upon passage

§ 6 — EVALUATING REMEDIATION PROGRAMS

The bill requires the DEP commissioner to begin evaluating the state's brownfield remediation programs and the laws that affect this activity within seven days after it takes effect. He must report his findings to the governor and the Commerce and Environment committees by December 15, 2011. The commissioner must do this within available appropriations and address these points:

1. the factors that influence the time it takes to investigate and remediate a brownfield under existing programs;

2. the number of properties that enter each remediation program,

the rate at which they do so, and the number that complete each program's requirements;

3. the use of LEPs in expediting the remediation process;

4. verification audits LEPs complete;

5. statutory programs providing liability relief to existing and potential landowners;

6. comparison of existing remediation programs to states with a single program;

7. the commissioner's use of studies and other resources available from various organizations; and

8. recommendations to address issues the report raises or streamline or expedite the remediation process.

EFFECTIVE DATE: Upon passage

§ 7 — DEFINITION OF BROWNFIELDS

The bill expands the statutory definition of brownfields, thus making more types of property (1) eligible for state and local assistance and (2) subject to regulatory requirements. Under current law, a brownfield is an abandoned or underused property that is not being redeveloped or reused because of real or potential contamination requiring remediation. The contamination can be in the ground water, soil, or buildings and must be investigated, assessed, and cleaned up while the property is being restored, redeveloped, or reused, or before these activities can occur.

The bill expands the definition to include abandoned or underused property where real or potential contamination must be investigated or remediated before it can be redeveloped, reused, or expanded.

EFFECTIVE DATE: July 1, 2011

§ 8 — DEP FEE EXEMPTIONS

The bill exempts state, municipal, and private organizations from paying DEP fees when cleaning up brownfields. It exempts entities receiving state funds for this purpose. It also exempts specified state entities from paying fees for new or pending applications for environmental condition assessment forms, covenants not to sue, and Transfer Act forms when investigating or remediating brownfields before siting a state facility. This exemption applies to agencies, authorities, and higher education institutions.

The bill also exempts parties from paying any DEP fees when they intend to investigate and remediate brownfields without state assistance. In these cases, they pay no fees relating to contamination other parties caused before they acquired the property.

EFFECTIVE DATE: July 1, 2011

§§ 9-11 — ABANDONED BROWNFIELD CLEANUP (ABC) PROGRAM

Expanded Benefits

The bill expands the range of benefits and eligible entities and properties under this program, which exempts its participants from investigating and remediating contamination that emanated from the property before they acquired it. The bill also limits their liability to the state or any third party for this contamination to anything they did to cause or contribute to the contamination or negligently or recklessly exacerbate it.

The bill exempts the participants from filing the required Transfer Act forms, designates them innocent third parties, and specifies conditions exempting them from liability to the DEP commissioner and other parties implementing abatement orders under the statutes and common law. But this exemption does not extend to negligent and reckless actions exacerbating the contamination.

The bill also exempts them from paying the covenant not to sue fee

and allows them to transfer the covenant to subsequent owners as long as the property is being remediated or was remediated according to DEP standards.

Eligible Property

The bill expands the range of property eligible to participate in the program. Under current law, a brownfield qualifies if it has been unused or significantly underused since October 1, 1999. Under the bill, it qualifies if it has been in either condition for at least five years before the participant applied to have the property admitted into the program.

The bill allows the DECD commissioner to waive this five-year criterion if the applicant can show that the property otherwise qualifies for the program and demonstrates the value of redeveloping it.

Lastly, the bill expands one of the criteria a property must meet for the commissioner to admit it into the program. Under current law, she can admit the property if the party that contaminated it cannot be determined, no longer exists, or cannot remediate it (i.e., responsible party criteria). Under the bill, she can admit the property if the responsible party must remediate the contamination, including the contamination that emanated from the property.

Eligible Applicants

The bill opens the ABC program to municipalities, their economic development agencies, and private entities (nonprofit and for-profit) acting on a municipality's behalf. It also allows them to nominate property for the program regardless of whether they own it. The bill also exempts municipalities from having to meet the responsible party criteria described above for property they own.

The bill eliminates a condition an applicant must meet before the commissioner can admit the property into the program. Under current law, the applicant must enter into DEP's voluntary remediation program, agree to investigate and remediate the contamination

according to the applicable standards and regulations, and eliminate contamination emanating or migrating from the property. Further, the applicant cannot be the certifying party under the Transfer Act (i.e., the party to a transaction responsible for certifying the property's condition before and after remediation). The bill eliminates the latter condition.

Program Administration

The bill explicitly requires parties acquiring property in the program to do so by submitting an application to the DECD commissioner, which she must prescribe and use to determine if they meet the program's eligibility requirements. The bill implicitly requires her to determine an applicant's eligibility in consultation with the DEP commissioner.

The bill specifies that the program's liability relief and other benefits apply only if the DECD commissioner accepts the property into the program.

EFFECTIVE DATE: July 1, 2011, except for the Transfer Act and covenant not to sue provisions, which take effect upon passage.

§ 10 — TRANSFER ACT EXEMPTIONS

The bill exempts from the Transfer Act title transfers from a municipality or bankruptcy court to a nonprofit organization. It also makes two conforming changes exempting from the act brownfields that are participating in the ABC program and the new liability protection program the bill creates (see § 17).

EFFECTIVE DATE: Upon passage

§§ 12-14 — ENVIRONMENTAL USE RESTRICTIONS (EUR)

The bill allows the DEP commissioner to waive some of the requirements for recording EURs and releasing parties from them. An EUR is an easement a property owner records in the municipal land records and that prohibits specific uses or activities at a property that could harm human health and the environment.

The law prohibits an owner from recording an EUR unless other parties with an interest in the property accept the restriction. The owner must record a document to that effect when he or she records the EUR (i.e., subordination agreement). Current law allows the commissioner to waive this requirement if the EUR has little or no effect on the party's interest in the property. The bill requires the commissioner to waive the requirement that the owner obtain subordination agreements from parties whose interest in the land creates no conditions the EUR prohibits.

The bill changes the conditions under which the commissioner can release parties from the EUR's restrictions. Under current law, he can release a party for conducting an activity on all or part of the property if the owner remediated it or the portion where the activity will occur. The owner must also record the release in the land records (§ 12).

The bill distinguishes between permanent and temporary releases and allows the commissioner to grant temporary ones without requiring the owner to remediate all or part of the property. The owner must still record the release in the land records, unless the commissioner waives this requirement, which he may do if the activity is "sufficiently limited in scope or duration."

The bill specifically authorizes the attorney general and the DEP commissioner to enforce the statutes authorizing EURs. Current law allows them to enforce EURs without reference to the authorizing statutes.

The bill also specifies that the commissioner's regulations governing EURs may cover fees, financial surety, monitoring, and reporting requirements.

EFFECTIVE DATE: Upon passage

§ 15 — BROWNFIELDS WORKING GROUP

The bill extends the term of the working group to January 15, 2012, from January 15, 2011. The group was formed under PA 10-135, which

required it to study how the state's brownfields were being cleaned up and remediated and report its findings to the Commerce Committee by its expiration date. The bill requires the group to submit another report on this topic by January 15, 2012, to the committee and the governor.

The bill also increases the group's membership from 11 to 13, requiring the governor to appoint the two additional members.

EFFECTIVE DATE: Upon passage

§16 — CDA TAX INCREMENT BOND FINANCING PROGRAM SUNSET

The bill eliminates the July 1, 2012, sunset date for funding new projects under CDA's tax increment financing program. Under this program, CDA issues bonds on behalf of a municipality and backs them with the new or incremental property tax revenue a completed project generates. The law allows CDA to issue these bonds for (1) cleaning up and redeveloping brownfield projects anywhere in the state and (2) financing information technology projects in economically distressed municipalities.

EFFECTIVE DATE: July 1, 2011

§ 17 — LIABILITY PROTECTION PROGRAM

Overview

The bill protects parties from liability to the state and third parties for cleaning up brownfields according to its requirements. Meeting these requirements extends the protections during or after remediation to a brownfield's immediate prior owner and the party acquiring it. Program participants are liable for contaminating the property or contributing to contamination that was there before they acquired it.

The bill requires the DECD commissioner to establish, within available appropriations, a program for providing these protections, but it assigns significant administrative duties to the DEP commissioner. The DECD commissioner must select brownfields for

participating in the program; the DEP commissioner must monitor and audit their remediation.

Type and Scope of Benefits

The program protects participants from liability to the state and third parties only for contamination that existed before they acquired the property and that they did not cause, exacerbate, or contribute to.

But the protection is not absolute. A participant must clean up the property according to DEP standards. It or its successors must also comply with any remediation orders DEP may issue under the bill after the property has been remediated.

The participants are also exempt from filing the Transfer Act forms when they convey their brownfield property. But this exemption does not relieve them from complying with any other laws requiring parties to certify a property's environmental condition.

Lastly, the DECD commissioner's decision accepting the property into the program does not affect decisions regarding it under other state and federal brownfield funding programs. Nor does it prevent the participants from applying for funds under those programs.

Eligibility

Property. DECD may admit a property into the program if it and its owners meet the bill's application requirements. The property must be a "brownfield" whose redevelopment will benefit the economy (see § 7), and the applicant must show that the contamination levels exceed DEP's standards for protecting the environment, health, and public welfare.

Property undergoing remediation or subject to remedial orders under other programs can participate in the bill's program. Property being remediated under a DEP cleanup program qualifies for the program, but not one being remediated under a state or federal cleanup order.

Property contaminated by polychlorinated biphenyls (PCB), a chemical used in manufacturing, can be accepted into the program, but acceptance does not relieve the owners from complying with PCB regulations. The same applies to property where petroleum and chemicals leak from underground tanks.

Applicants. The program is open to people, businesses, nonprofit organizations, municipalities, public and private municipal economic development agencies, and state agencies. They can apply to have a property admitted into the program if they are "innocent landowners," "bona fide prospective purchasers," or contiguous property owners.

An innocent landowner is a person or entity that owns property another party contaminated. A bona fide prospective purchaser is a person or entity that acquires a brownfield after July 1, 2011 and shows, by a preponderance of the evidence, that it:

1. acquired the property after it was contaminated;

2. is complying with any environmental land use restrictions imposed on the property;

3. has inquired about its previous owners and how they used it;

4. has provided the notices required after discovering or releasing hazardous substances and taken appropriate steps to stop the release, prevent future releases, and prevent or limit harm to people and the environment;

5. is cooperating with people authorized to contain or clean-up the contamination; and

6. is providing the information DEP requests.

A contiguous property owner is a person or entity that owns property next to a brownfield owned by another party. The contiguous owner can participate in the program if it:

1. addresses the contamination on the owner's property as the bill specifies,

2. complies with environmental land use restrictions,

3. provides any information DEP requests, and

4. provides all required notices regarding the contamination on its property.

Innocent landowners, bona prospective purchasers, and contiguous owners can participate in the program only if they did not contaminate the property and are unaffiliated with the parties that did.

Acceptance in the Program

Method. DECD can accept a brownfield into the program by application or nomination. Eligible applicants may submit applications to the DECD commissioner on forms she provides. Municipalities and economic development agencies may nominate brownfields they do not own for acceptance into the program, but the bill does not specify whether they can do so without the owner's permission or the process they must follow.

The commissioner may accept up to 32 brownfields per year into the program.

Application Content. The application must include:

1. a title search,

2. a DEP-prescribed Phase I Environmental Site Assessment prepared by or for a bona fide prospective purchaser,

3. a current property inspection,

4. proof that the applicant and the property qualify for the program,

5. information the commissioner needs to select brownfields based

on the bill's statewide portfolio factors (see below), and

6. other information she requests.

(A Phase I Environmental Site Assessment evaluates a property's historical and current uses and the activities conducted there. The information helps identify potentially contaminated areas.)

Certifications. When applying for the program, applicants must certify that it meets the program's eligibility criteria. Specifically an applicant must certify, on a form the commissioner provides, that it is:

1. an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner;

2. did not contaminate the property and is not affiliated with the party that did; and

3. did nothing to pollute the state's waters.

The applicant must also certify the property's condition. It must show that the property is a brownfield and that the contamination exceeds DEP's remediation standards. The applicant must also show that the brownfield is not subject to federal or state enforcement action or on the state or national lists of contaminated sites.

The commissioner, in consultation with the DEP commissioner, must determine if the certifications are accurate and consider only those that are.

Statewide Portfolio Factors. The DECD commissioner must select applications to create a diverse portfolio of brownfield projects from around the state. She must do this in consultation with the DEP commissioner based on the following "statewide portfolio factors":

1. a brownfield's capacity to create or retain jobs and generate the revenue needed to sustain itself,

2. the applicant's readiness to investigate and remediate the property,
3. the portfolio's geographic makeup,
4. the populations of the municipalities represented in the portfolio,
5. the brownfield's size and complexity,
6. the time and extent to which the brownfield has been underused,
7. the extent to which its remediation will increase the municipality's grand list,
8. the extent to which the remediated brownfield is consistent with municipal and regional planning objectives and addresses smart growth and transit-oriented development principles, and
9. other factors the DECD commissioner chooses to consider.

Fees

The bill imposes fees on parties accepted into the program (i.e., acceptance fees) and on those that subsequently acquire their property (i.e., transfer fees).

Acceptance Fees. Applicants accepted into the program (i.e., participants) must pay the DEP commissioner a fee equal to 5% of the brownfield's assessed value as of the municipality's most recently completed grand list. (Municipalities annually update their grand lists on October 1.) A participant must pay the fee in two equal installments, but the bill sets conditions for reducing or eliminating the amounts.

The participant must pay the first installment within 180 days after the DECD commissioner approves the application and the second within four years after that date. DEP must deposit the fee in the

Special Contaminated Property Remediation and Insurance Fund, which provides low-interest loans for investigating and remediating contaminated property. (DECD administers the fund in cooperation with DEP).

The DEP commissioner must reduce the installments if the participant finishes investigating and remediating the brownfield ahead of the bill's deadlines for completing these tasks. He must reduce the first installment by 10% if the participant finishes investigating the property within 180 days after the DECD commissioner approves its application. (As discussed below, the bill gives participants up to two years to investigate the property.) The participant must document this fact on a form the DEP commissioner provides and whose content an LEP approved in writing.

The DEP commissioner must eliminate the second installment if the participant cleans up the property within four years after the application's approval date and submits the supporting documentation. (The bill gives participants up to eight years to remediate a property.)

The commissioner must extend the four-year deadline if the participant requests his approval regarding a remediation standard and he takes over 60 days to reply. The extension must equal the number of days it took the commissioner to respond after the 60-day deadline, but not including the days it took the participant to respond to the commissioner's request for more information. (Under the bill, the commissioner can request information anytime while the property is in the program.)

Participants that do not remediate property within four years may still qualify for relief from paying the second installment. If a participant investigates contamination that migrated from the property, the commissioner must reduce the installment or give the participant a refund for the reasonable environmental service costs it incurred for investigating the off-site contamination, up to the

installment amount. The participant must provide information showing that it investigated the contamination according to DEP standards. The information must be approved by an LEP and submitted on a DEP form.

The bill exempts municipalities and economic development agencies from paying application fees, but requires them collect and remit the fees to DEP when they transfer the property.

The bill implicitly allows municipalities and economic development agencies acting on their behalf to request fee waivers for government- and nonprofit-owned property within their respective jurisdictions; it allows the DEP commissioner to grant them based on:

1. the property's location within a distressed municipality,

2. the extent to which the municipality or the economic development agency demonstrates the project's economic and community impacts, and

3. proof regarding the property owners' eligibility and that paying the fee will undermine the project's success.

Transfer Fee. Parties acquiring property in the program must pay a $10,000 transfer fee. As with the acceptance fee, DEP must deposit the fee revenue in the Special Contaminated Property Remediation and Insurance Fund. The bill exempts municipalities and municipal economic development agencies from paying this fee when they acquire property in the program, but it requires them to collect and remit it to DEP if they transfer the property to another party.

Participant Duties and Obligations

Although the bill protects participants from liability to the state and third parties for contamination caused by others, it requires them to investigate and remediate it according to DEP standards. They must characterize, abate, or remediate the contamination on the property according to prevailing standards and guidelines and clean it up

according to the plan and schedule they must submit to DEP for this purpose.

But participants may become liable for this contamination if the DEP commissioner subsequently learns that the decisions accepting the property into the program and approving its remediation were based on incomplete or inaccurate information. Specifically, he can require a participant to act if:

1. he can show that the participant or its successor knew or had reason to know that the information in the documents attesting to the property's remediation was false or misleading;

2. new information shows that the property was contaminated by other substances that were unknown when the property was accepted into the program;

3. the participant failed to comply with its remediation plan and schedule; and

4. conditions have changed and now endanger the environment and human health, such as a change in the property's use from business or other nonresidential use to residential use.

Participants are not obligated to characterize, abate, or remediate hazardous plumes or substances beyond the property's boundaries (except if they caused them), but they must comply with the notification requirements the law imposes on property where the contamination spreads beyond its boundaries.

Participants are liable for any contamination they cause or contribute to and must investigate and remediate it.

Investigation and Remediation Process

Brownfield Investigation Plan and Remediation Schedule. The bill specifies the process and timeframes for investigating and remediating the property. Participants must submit an investigation

plan and remediation schedule for this purpose to the DEP commissioner within 180 days after their applications were approved. These documents must be signed and stamped by an LEP.

The plan and schedule must show that:

1. the investigation will be completed within two years of the application's approval date,

2. remediation will be started within three years of that date, and

3. remediation will be completed within eight years of the approval date.

(The plan and schedule must also show that the property will be sufficiently remediated to support "verification" or "interim verification." Verification is the standard signifying that the property has been investigated and remediated according to state standards. Interim verification is the standard signifying that the soil has been remediated but that the ground water still requires remediation under a "long-term remedy.")

The DEP commissioner may extend the eight-year remediation deadline only if the participant can show that reasonable progress was made toward remediating the property but that forces beyond the participant's control delayed the work.

The plan and schedule must address only the contamination that exists within the property's boundaries, unless the participant caused it to spread to other property. In any case, the participant must still comply with the notice requirements the law imposes on parties owning contaminated property.

The plan and schedule must include a timeframe for notifying specified parties and the public before the remediation begins. The participant must notify adjacent property owners by posting a notice on the brownfield advising them about the planned remediation or mailing a notice about it to them. It must also notify the affected

municipality's public health director and the general public. Lastly, it must publish a notice about the remediation in a newspaper serving the affected municipality.

The public has 30 days from the last notice to comment on the proposed remediation. The bill implicitly requires the participant to respond to the public comments by allowing the participant to start cleaning up the property only after it submits those comments and its responses to the DEP commissioner.

Implementing the Plan and Schedule. When implementing the plan, the participant must submit applications for any permits it needs to DECD's permit ombudsman.

The participant must also document when it completes a task and notify the DEP commissioner to that effect. It must document that an investigation has been completed according to prevailing standards and guidelines on a form the commissioner must provide. An LEP must approve the documentation in writing.

The participant must also document and notify the commissioner when the remedial work begins. It must notify the commissioner on a form he provides, accompanied by an LEP-approved remedial action plan.

Lastly, the participant must document that the property was remediated, which under bill must occur under a LEP's supervision. The participant must document the remediation by submitting a remedial action report in which the LEP describes the remedial work, opines that it meets the remediation standards, and issues a verification or interim verification. The LEP must sign and stamp the report. The participant must submit the report to the DEP and DECD commissioners.

Participants submitting interim verifications and their successors must continue remediating the ground water until the remediation standards are met. They must:

1. operate and maintain the long-term remedy as the remedial action report, the interim verification, and the commissioner's orders require;

2. prevent the land from being exposed to contaminated ground water plumes exceeding the remediation standards;

3. take all reasonable steps to contain any ground water plumes on the property; and

4. submit annual status reports to the DEP and DECD commissioners.

Lastly, participants must keep the records that were created while the property was being investigated and remediated for at least 10 years and make them available upon request to the DEP and DECD commissioners.

Before approving the verification or interim verification, the DEP commissioner may enter into a memorandum of understanding with the participant requiring further remedial action and monitoring needed to protect the environment and human health.

Audits

Timing. The bill authorizes audits to verify if a property was properly investigated and remediated. It authorizes the DEP commissioner to audit these actions under two scenarios. He can audit them anytime he requests information from the participant and receives no response within 60 days. He can also audit them after the participant submits the remedial action report and the verification or interim verification.

First 180 Days. During the first 180 days after receiving these documents, the commissioner can audit the process for any reason. He must first notify the participant about whether he will do so within 60 days after receiving the documents. If he decides to audit the actions, he must complete the audit within 180 days after receiving the

documents. The commissioner can request additional information anytime during the audit period. If he does not receive it within 14 days after requesting it, the audit is suspended and the 180-day clock stops until the participant provides the information. But the commissioner may restart the audit if the participant fails to respond to the commissioner within 60 days after his request.

After 180 Days. The commissioner may audit the remediation 180 days after receiving the verification or interim verification if he believes they were based on inaccurate, erroneous, or misleading information or determines that post verification monitoring and other actions have not been taken. He may also audit the remediation after 180 days if an environmental land use restriction was not recorded in the land records, the law was violated with regard to verification, or the remediation may not be preventing a substantial threat to the environment and public health.

Audit Findings and Reply. Within 14 days after completing the audit, the commissioner must send the audit findings to the participant, the LEP, and the DECD commissioner. In doing so, he may approve or disapprove the remedial action report and, if he does the latter, explain why.

If the commissioner disapproves the remedial action report and the verifications, the participant must submit to him and the DECD commissioner a "report of cure of noted deficiencies" within 60 days after receiving the commissioner's disapproval notice. The DEP commissioner has up to 60 days to approve or disapprove this report.

Onset of Liability Protections

The bill's liability protections begin after the DEP commissioner notifies the participant that he will not audit the process or that his audit findings have been addressed. They also begin if he fails to act on a remedial action report and the accompanying verifications within 180 days after receiving them.

Under both outcomes, the participant is not liable to the state or third parties for the costs incurred to remediate the contamination identified in the plan. Nor is it liable for the costs relating to equitable relief or damages resulting from the contamination. The protection also applies to historical off-site impacts, including deposition, waste disposal, the effects on sediments, and damage to natural resources.

But the protection does not extend to contamination that must be addressed under the regulations governing PCBs and underground storage tanks. Nor does it stop the commissioner from requiring further remediation after the liability protections begin. As noted above, the bill specifies conditions under which he may do so.

Property Transfers

The participant's keeps the bill's liability protections after it transfers property to another party. If a participant transfers the property before the DEP commissioner issues a no audit letter or the other events signaling the property's remediation, it is not liable to the state or third parties for the costs incurred to remediate the contamination identified in the plan. Nor is it liable for the costs relating to equitable relief or damages resulting from the contamination. The protection also applies to historical off-site impacts, including deposition, waste disposal, the effects on sediments, and damages to natural resources.

As with the liability protections above, they do not extend to contamination that must be addressed under the regulations governing PCBs and underground storage tanks. Nor does it stop the commissioner from requiring further remediation after the liability protections begin. As noted above, the bill specifies conditions under which he may do so.

The liability protection also extends to the party that acquires the property (i.e., transferee) and to the party that owned it before the participant acquired it. The transferee receives the protection if:

1. when the transfer is made, the participant has complied with the bill and the plan and schedule and

2. the transferee meets the bill's eligibility criteria, pays the $10,000 transfer fee, and assumes the participant's obligations under the bill.

The bill's protections also flow to the party who owned the property immediately before the participant acquired it (i.e., immediate prior owner). But they do not extend to contamination emanating from the property or to penalties, fines, costs, expenses, and obligations that the immediate prior owner incurred while it owned the property. Nor do they extend to an owner that failed to fulfill any legal obligation to investigate and remediate the contamination at or from the property.

EFFECTIVE DATE: July 1, 2011

§ 18 — BRIDGEPORT SPECIAL TAXING DISTRICT

The bill expands the bonding powers of Bridgeport's special taxing district. PA 05-289 authorized the district's formation to finance roads, sewers, and other infrastructure and pay for the services needed to maintain it. It authorized the district to issue up to $190 million in bonds secured by:

1. the district's full faith and credit;

2. fees, revenues, and benefit assessments; or

3. a combination of its full faith and credit and fees, revenues, and benefit assessments.

The bill allows the district to issue bonds, without limit, to:

1. finance property acquisition and improvements and back them only with fees, revenues, benefit assessments, or charges the district imposes on the property and

2. refund outstanding bonds, notes, and other obligations.

EFFECTIVE DATE: July 1, 2011

§ 19 — LANDOWNER RECREATIONAL LAND IMMUNITY

By law, a landowner who makes land available to the public for recreational purposes without charging admission owes no duty of care to (1) keep the land safe for recreational purposes or (2) give any warning of a dangerous condition, use, structure, or activity on the land to those entering for recreational purposes.

Additionally, the law provides that such landowner does not thereby (1) make any representation that the land is safe for any purpose, (2) confer on the person using the land a legal status entitling the person to duty of care by the owner, or (3) assume responsibility for any injury to a person or property that is caused by the landowner's act or omission.

The statutory immunity from liability does not apply to (1) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity or (2) injuries suffered in any case where the landowner charges people who use the land for recreational purposes.

For purposes of these liability protections, current law defines "owner" as the possessor of a fee interest, tenant, lessee, occupant, or person in control of the premises. The Connecticut Supreme Court ruled that municipalities are not "owners" under these provisions (*Conway v. Wilton*, 238 Conn. 653 (1996)). The bill expands this definition to include any (1) town, city, borough; (2) special taxing district; and (3) metropolitan district created by special act or under the statutes. It also explicitly includes railroad companies in the definition.

By law, "charge" means the admission price or fee asked in return for an invitation or permission to use the land. The bill specifies that any state or local taxes collected under state law are not considered a charge for using the property.

EFFECTIVE DATE: October 1, 2011

§ 20 — MUNICIPAL LIABILITY PROTECTIONS FOR CONTAMINATED PROPERTY

The bill sets conditions protecting large municipalities from liability to the state for pollution or hazardous waste on or spreading from property for which they have an easement. The protection applies to anything discharged or deposited in any public or private sewer, or that otherwise comes into contact with any water, that contaminates or cause significant and harmful change in the temperature of any state waters. It also applies to waste posing a present or potential threat to human health or the environment when improperly handled.

The protection covers municipalities with a population over 90,000 that acquired and recorded an easement allowing the public to use the land for recreation without charge. But it does not relieve them from ensuring that the contamination poses no risks to the public based on how they may use the land.

Under the bill, these municipalities are not liable to the state for any fines, penalties, or costs associated with investigating or remediating the property. Municipalities are exempt from the clean-up costs, fines, and penalties if:

1. the contamination occurred before a municipality acquired the easement;

2. the municipality or its agent did not cause, create, or contribute to the contamination; and

3. the municipality or members of the public using the land covered by the easement do not contribute or exacerbate the contamination or prevent others from investigating and remediating it.

The bill's protection applies to only the municipalities and the land subject to the easement. It does not limit or affect the landowner's or operator's liability under any law, including those requiring them to address pollution and pay fines and penalties.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Related Bill

HB 6221 (File 756) eliminates the July 1, 2012, sunset for funding projects with CDA bonds backed by incremental property tax revenue.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute
Yea 19 Nay 0 (03/22/2011)

Environment Committee

Joint Favorable
Yea 23 Nay 0 (04/27/2011)

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 52 Nay 0 (05/10/2011)

Judiciary Committee

Joint Favorable
Yea 32 Nay 0 (05/18/2011)